

18-2323-cv(L), 18-2552-cv(XAP)

United States Court of Appeals
for the
Second Circuit

TIME WARNER CABLE OF NEW YORK CITY LLC,

Petitioner-Cross-Respondent,

— v. —

NATIONAL LABOR RELATIONS BOARD,

Respondent-Cross-Petitioner.

ON REVIEW FROM THE NATIONAL LABOR RELATIONS BOARD

JOINT APPENDIX
Volume 2 of 3 (Pages A-268 to A-520)

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Time Warner Cable
Performance Improvement / Corrective Action Form

Employee Name:	Cook-Harrison, Crystal	Job Title:	Tech V	PeopleSoft ID:	1116284
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Hire Date:	04/06/2007	Location:	College Point	EID#	E106401
Department:	Business Class	Supervisor:	Greg Bronson		
Date:	5/23/2014	Employee Type:	<input type="checkbox"/> Exempt	<input checked="" type="checkbox"/> Non-Exempt	Official Exhibit No.
Action Type:	<input type="checkbox"/> Policy (Including Attendance)	<input type="checkbox"/> Performance	Case No. <u>2-CA-12680</u> GC 13 Disposition: Identified <input checked="" type="checkbox"/> Rejected <input type="checkbox"/> Received <input checked="" type="checkbox"/> IN THE MATTER OF: <u>TWC</u>		
Disciplinary Category:	<input checked="" type="checkbox"/> Safety Violation	<input type="checkbox"/> Performance			
	<input checked="" type="checkbox"/> Misconduct				
	<input checked="" type="checkbox"/> Other				
Specific Issue:	Violation of Section 31 of the Collective Bargaining Agreement (CBA) & Standards of Business Conduct				
Level of Action:	<input type="checkbox"/> Documented Counseling <input type="checkbox"/> Written Warning / PIP <input checked="" type="checkbox"/> Final Written Warning <input type="checkbox"/> Termination <input type="checkbox"/> Other				
Indicate prior Action(s) given and dates:					
<input type="checkbox"/> Verbal Coaching(s)	Date(s) issued:	<input type="checkbox"/> Written Warning / PIP	Date issued:		
<input type="checkbox"/> Documented Counseling	Date(s) issued:	<input type="checkbox"/> Final Written Warning	Date issued:		
<input type="checkbox"/> Other	Date(s) issued:				
Additional Notes:					
Description of the Violation/Conduct/Performance. (Include: History of prior occurrences and counseling dates, times and details of recent incidents; explanation of policy violation or expectation. Attach additional pages if more space is needed.)					
Crystal, This serves to notify you that you are being issued a Final Written Warning for your participation in the work stoppage of April 2, 2014 outside of the Paidge Avenue facility. On April 2, 2014 there was a blockade on Paidge Avenue involving Local 3 representatives and TWC bargaining unit employees that prevented ingress and egress to and from Paidge Avenue, delaying work for over an hour. This action was a work stoppage in clear violation of the collective bargaining agreement. Section 31 of the CBA states "There shall be no cessation or stoppage of work, service or employment on the part of or the instance of either party, during the term of this agreement." These actions resulted in a substantial delay to the start of daily operations and negatively impacted TWC's ability to service its customers. In addition, the action posed safety risks to our facility by blocking exits. Your participation resulted in a substantial delay to the start of daily operations and negatively impacted TWC's ability to service its customers. During a subsequent investigatory interview you confirmed your participation on April 2, 2014.					
Action Steps Needed to Correct the Problem. (Include: Outline of expectations, performance improvement plans, training, policy reinforcement, timelines and follow-up plans, and consequences of continued problems. Not applicable to terminations)					
Measurable/Tangible Improvement Goals and Expectations: Going forward refrain from any cessation or work stoppage that violates the collective bargaining agreement					
1. Training or Special Direction Provided:					
2. I recognize that you may have certain ideas to improve the situation at hand. Therefore, I encourage you to provide your input and/or					

GC-13

TWC002019

A-269

Have you reviewed the CBA?

TO Some extent - I don't have full details

Are you familiar with the section that prohibits cessation or stoppage of work?

Review section: "There shall be no cessation or stoppage of work, service or employment, on the part of, or at the instance of either party, during the term of this Agreement."

You understand that this rally stopped the work of the SNYC Area for over one hour prohibiting us from meeting our service calendar. As a result of this violation of the law and CBA and the inability to maintain our business. Do you understand that this action subjects you to discipline, including possible termination?

Didn't know about that.

FOR THOSE WHO WEREN'T WORKING THAT DAY:

Why did you come to work? Did anyone in management direct you to come to work?

FOR SUSPENDED: Why did you come to work that day?

You understand that a suspension means that you are not to come to work?

You understand that you were in violation of your suspension by coming to work on April 2? Who directed you to come to work?

If the employee asks what happens next

We are gathering facts and you should return to work. To be clear, you are prohibited from engaging in any work slowdown or any other action which impacts on workflow. Any attempt to do so will lead to further discipline, including the possibility of immediate termination.

If you have anything else you want to share w/me please call me or send me an email by tomorrow.

TWC004754

A-270

A2cam RV

Time: 11:30

Witnesses:

Damon Young
~~Derek Jordan~~ Justin Pinnerby
 Investigation April 2, 2014 Local 3 Sponsored Rally

Cue up video or photo of employee prior to meeting.

How long are you working for TWC? 14 years

What is your assigned work schedule? Mon, Tue - Thu - Fri - 7:30am - 6pm

Who do you report to? Justin Pinnerby

On April 2 there was a gathering of employees outside of our Paidge Ave location.

Were you part of that group? yes

Yes, thank you (bring up video/show picture) yes

No, do you want to think back again? Let me show you some pictures/video

How did you get to work that day? Was it a company vehicle? Where did you park? What time did you arrive?
 Dropping someone off into the city - 7:00am

It appears that Derek Jordan was present as well.

Who told you about this gathering? NO one →

When did you receive notification of the gathering? NO one →

How did was this event communicated to you? NO →

What were you told about the reason for the protest? Work safety meeting.

If the employee states that they were not told about it or asked to be involved, ask them if they remained outside with the protest? Why did you remain outside? Did they attempt to contact a manager to let them know they could not get into work or make any other attempt to get into the facility?

TOPIC → Work safety meeting

on - Business Red

Derek - Jordan

Duration Didn't hear track of her.

Case No. Official Exhibit No.

2-CA-126860

GC-14

Disposition: Identified ☒
Rejected ☐ Received ☒

IN THE MATTER OF:

TLC

Date: Witness: Reporter:

4/1/14 C. Liberty M. M.

No. Pages:

(2)

GC-14

TWC004753

A-271

Have you reviewed the CBA?

NO

Are you familiar with the section that prohibits cessation or stoppage of work?

I Don't have a
copy, NO.

Review section: "There shall be no cessation or stoppage of work, service or employment, on the part of, or at the instance of either party, during the term of this Agreement."

You understand that this rally stopped the work of the SNYC Area for over one hour prohibiting us from meeting our service calendar. As a result of this violation of the law and CBA and the inability to maintain our business. Do you understand that this action subjects you to discipline, including possible termination?

FOR THOSE WHO WEREN'T WORKING THAT DAY:

Why did you come to work? Did anyone in management direct you to come to work?

I Don't
recall.

FOR SUSPENDED: Why did you come to work that day?

You understand that a suspension means that you are not to come to work?

You understand that you were in violation of your suspension by coming to work on April 2? Who directed you to come to work?

If the employee asks what happens next

We are gathering facts and you should return to work. To be clear, you are prohibited from engaging in any work slowdown or any other action which impacts on workflow. Any attempt to do so will lead to further discipline, including the possibility of immediate termination.

If you have anything else you want to share w/me please call me or send me an email by tomorrow.

TWC004748

A-272

4/14/14 Diane Cabrera

Investigation April 2, 2014 Local 3 Sponsored Rally

Cue up video or photo of employee prior to meeting.

How long are you working for TWC?

9/30/10

What is your assigned work schedule?

Sat / Mon / Thurs / Fri start @ 10:30 AM

Who do you report to?

Alberto Alonso, mgr Frank Turco

On April 2 there was a gathering of employees outside of our Pidge Ave location

Were you part of that group?

Yes. A safety meeting.

Yes, thank you (bring up video/show picture)

Just heard about the meeting.

No, do you want to think back again? Let me show you some pictures/video

How did you get to work that day? Was it a company vehicle? Where did you park? What time did you arrive?

Drove. I gave a lift to someone.

It appears that Derek Jordan was present as well.

Who told you about this gathering?

Heard for the first time during ride.

When did you receive notification of the gathering?

That was my Day off.

How did was this event communicated to you?

That was my Day off.

What were you told about the reason for the protest?

If the employee states that they were not told about it or asked to be involved, ask them if they remained outside with the protest? Why did you remain outside? Did they attempt to contact a manager to let them know they could not get into work or make any other attempt to get into the facility?

Case No.

Official Exhibit No.

2-11-13680

GC 15

Disposition: Identified

Rejected Received

IN THE MATTER OF:

The

Date:

Witness:

Reporter:

Noted Pages:

Cabrera

Very reluctant to respond to questions.
Asked for a break to s/w her
Shop Steward. Permission not granted.

Then, Cabrera asked if she could call
route were not

GC-15

TWC004747

A-273

Have you reviewed the CBA? *Yes*.

Are you familiar with the section that prohibits cessation or stoppage of work? *Yes*.

Review section: "There shall be no cessation or stoppage of work, service or employment, on the part of, or at the instance of either party, during the term of this Agreement." *Yes.*

You understand that this rally stopped the work of the SNYC Area for over one hour prohibiting us from meeting our service calendar. As a result of this violation of the law and CBA and the inability to maintain our business. Do you understand that this action subjects you to discipline, including possible termination?

FOR THOSE WHO WEREN'T WORKING THAT DAY:

Why did you come to work? Did anyone in management direct you to come to work?

FOR SUSPENDED: Why did you come to work that day?

You understand that a suspension means that you are not to come to work?

You understand that you were in violation of your suspension by coming to work on April 2? Who directed you to come to work?

If the employee asks what happens next

We are gathering facts and you should return to work. To be clear, you are prohibited from engaging in any work slowdown or any other action which impacts on workflow. Any attempt to do so will lead to further discipline, including the possibility of immediate termination.

If you have anything else you want to share w/me please call me or send me an email by tomorrow.

flyer issued by gray hair gentleman to me. He said nothing to me.

*ie. Guy fell thru metal Jerry McVest
out of SNYC.
ie. Mollica fell off a ladder.
ie.*

TWC004752

A-274

2-CA-

Case No.

Official Exhibit No.

126860

GC 16

Disposition: Identified ☒Rejected ☐ Received ☒

IN THE MATTER OF:

TUC

Date: 4/11/16 Witness: R. H. H. Reporter: M. H. M.

No. Pages: 32

Investigation April 2, 2014 Local 3 Sponsored Rally

Cue up video or photo of employee prior to meeting.

How long are you working for TWC? 35 yrs.

What is your assigned work schedule? Tues - Fri

Who do you report to? Frank Turco.

On April 2 there was a gathering of employees outside of our Pledge Ave location. Were you part of that group? Yes.

Yes, thank you (bring up video/show picture)

No, do you want to think back again? Let me show you some pictures/video

How did you get to work that day? Was it a company vehicle? Where did you park? What time did you arrive? 7 AM. NO. on End of Building Towards provost.

It appears that Derek Jordan was present as well. Yes.

Who told you about this gathering? I did not even know of the meeting. I came to see the shop parked signal.

When did you receive notification of the gathering? No prior notification. Then I could not get down + Block.

How did was this event communicated to you? Safety Meeting.

If the employee states that they were not told about it or asked to be involved, ask them if they remained outside with the protest? Why did you remain outside? Did they attempt to contact a manager to let them know they could not get into work or make any other attempt to get into the facility? Remained outside til it broke up 8:10 AM.

I called the shop Steward to meet. me then I saw a group of people then I went over. when I first arrived I saw about 30 people. I was told it was a safety meeting I was told by techs Foreman + Mgrs. Steve Ramnarine came over to see what was going on + he said a safety meeting. Nobody else told me safety meeting.

GC-16

TWC004751

A-275

Have you reviewed the CBA?

Yes.

Are you familiar with the section that prohibits cessation or stoppage of work?

1st time heard.

Review section: "There shall be no cessation or stoppage of work, service or employment, on the part of, or at the instance of either party, during the term of this Agreement."

You understand that this rally stopped the work of the SNYC Area for over one hour prohibiting us from meeting our service calendar. As a result of this violation of the law and CBA and the inability to maintain our business. Do you understand that this action subjects you to discipline, including possible termination?

FOR THOSE WHO WEREN'T WORKING THAT DAY:

Why did you come to work? Did anyone in management direct you to come to work?

FOR SUSPENDED: Why did you come to work that day?

You understand that a suspension means that you are not to come to work?

You understand that you were in violation of your suspension by coming to work on April 27? Who directed you to come to work?

I did engage with employees

If the employee asks what happens next

We are gathering facts and you should return to work. To be clear, you are prohibited from engaging in any work slowdown or any other action which impacts on workflow. Any attempt to do so will lead to further discipline, including the possibility of immediate termination.

If you have anything else you want to share w/me please call me or send me an email by tomorrow.

TWC004750

A-276

4/14/14 Frank Tsavaris

Investigation April 2, 2014 Local 3 Sponsored Rally

Cue up video or photo of employee prior to meeting.

How long are you working for TWC?

40 yrs

What is your assigned work schedule?

Suspended for 4/2

Who do you report to?

Marc Severino

On April 2 there was a gathering of employees outside of our Paidge Ave location

Were you part of that group?

Yes. Just happen to be there in the neighborhood.

Yes, thank you (bring up video/show picture)

Why? Don't want to get into it personal.

No, do you want to think back again? Let me show you some pictures/video

How did you get to work that day? Was it a company vehicle? Where did you park? What time did you arrive?

There is 20 minutes. I came late almost over. It was a nice size crowd. It appears that Derek Jordan was present as well.

Who told you about this gathering?

When did you receive notification of the gathering?

How did was this event communicated to you?

What were you told about the reason for the protest?

Don't know

Derek here to have a meeting. If the employee states that they were not told about it or asked to be involved, ask them if they remained outside with the protest? Why did you remain outside? Did they attempt to contact a manager to let them know they could not get into work or make any other attempt to get into the facility?

Showed Frank he was 2 people away from Derek Jordan. Then I asked: could you not hear what was being said from there? no, alot of noise.

Official Exhibit No.

2-CA-12080 GC17

Disposition: Identified ☒Rejected ☐ Received ☒

IN THE MATTER OF:

TUC

Date:

Witness:

Reporter:

4/16/16

C. Liberty

GC-17

(2) No. Pages:

TWC004749

A-277

202

BEFORE THE
NATIONAL LABOR RELATIONS BOARD

In the Matter of:

TIME WARNER CABLE NEW YORK
CITY, LLC

Case No. 02-CA-126860

Respondent,

And

INTERNATIONAL UNION OF
ELECTRICAL WORKERS, AFL-CIO,
Local 3

Charging Party

The above-entitled matter came on for hearing pursuant to Notice, before MICHAEL A. ROSAS, Administrative Law Judge, National Labor Relations Board, Region 2, Javits Building, 26 Federal Plaza, New York, New York, 10278 in Courtroom 3611A on Tuesday, April 12, 2016, at 9:30 a.m.

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
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A P P E A R A N C E S

1 On Behalf of the General Counsel:

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12 On Behalf of the Respondent:

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A-279

204

1
2I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
Gregg Cory	211	250	--	--	244
	245	--	--	--	--
Spencer Walker	265	--	--	--	--
Mary Maldonado	274	--	--	--	295
	296	297	308	--	--

3

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A-280

205

1

E X H I B I T S

<u>EXHIBIT NUMBER</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>
GENERAL COUNSEL'S		
GC-36	264	263
RESPONDENT'S		
R-5	214	214
R-6	215	219
R-7	224	242
R-9	243	244
R-10	244	245
R-11	279	280
R-12	285	--
R-13	285	--
R-14	288	289
R-15	294	296
R-16	297	297

2

JUDGE ROSAS: On the record. This is a resumption in the matter of Time Warner Cable.

MR. ROSE: Well, Your Honor, we've looked at -- we were giving a disk of a little over 1,000 pages of subpoenaed documents. We've made headway through it. We're not ready to put in documents right now. We'd like to continue our search this evening, since we're going to be adjourning a little bit early today that would be beneficial. We also -- they've given us -- Respondent has given us an extensive privilege log, which we will review this evening, as well.

MR. ROSE: Yes, Your Honor.

MR. ROSE: Okay.

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

1 Okay, is Respondent ready to proceed?

2 MR. MARGOLIS: Yes, Your Honor, we have a couple of
3 preliminary matters. First, we'd like to put on our record
4 Respondent's Answer to the Second Amended Complaint. And the
5 Answer is specifically to Paragraphs 5 and 6 of the Second
6 Amended Complaint. W

7 With respect to Paragraph 5 of the Second Amended
8 Complaint Respondent admits that at material times the
9 individuals listed held the positions alleged and that they were
10 Supervisors within the meaning of Section 211 of the Act.

11 And Respondent denies Paragraph 6 in the Second Amended
12 Complaint. And it suspends the Answer to the First Amended
13 Complaint according to my records.

14 JUDGE ROSAS: Okay.

15 MR. MARGOLIS: Secondly, Your Honor, there is a subpoena
16 issue that we need to bring to your attention. Derek Jordan, a
17 Business Agent for Local 3, was served with a subpoena. And
18 yesterday at the close of the proceedings, since it appeared
19 that we would be getting to our case today, we instructed Mr.
20 McGovern to make sure that Mr. Jordan was here today. We were
21 told by Mr. McGovern both last night and again this morning that
22 he's not going to produce Mr. Jordan. So we have that difficulty
23 that we'll have to deal with.

24 JUDGE ROSAS: And this was subpoena or subpoena duces
25 tecum?

1 MR. MARGOLIS: It was a subpoena duces tecum.

2 MR. MCGOVERN: Only half the story, Your Honor, and we
3 touched on it briefly yesterday when Mr. Margolis gave me a copy
4 of the subpoena, which was purportedly served on March 31st,
5 2016 with a cover letter signed by Mr. Margolis. That is a
6 couple of days after Counsel received your Rules saying that
7 courtesy copies of the subpoena should be given to Counsel.

8 It also was a day before we had the Pre-Hearing Conference
9 Call when Your Honor asked whether subpoenas had been served and
10 if memory serves me correctly Mr. Margolis said no. General
11 Counsel said yes. And Your Honor, again, stressed that courtesy
12 copies should be sent.

13 Against that backdrop yesterday when I saw the subpoenas
14 for the first time, I spoke to Mr. Jordan. He said that he had
15 never gotten them. He asked around. It might be sitting -- I'm
16 not saying it wasn't ever brought to the Union, but it was never
17 given to him. Nobody has any idea where it is.

18 I indicated to Mr. Margolis that it's a subpoena duces
19 tecum and that today Mr. Jordan would be looking for the
20 documents and I would let him know whether there's any
21 responsive documents. I think that under the circumstances
22 that's a more than fair way to deal with it. Had I gotten the
23 courtesy copy on March 31st or even April 1st or April 2nd would
24 have had an opportunity to do all of this.

25 JUDGE ROSAS: Do you have an Affidavit of Service?

1 MR. MARGOLIS: We do, Your Honor.

2 JUDGE ROSAS: Did you file that in Next Gen?

3 MR. MARGOLIS: No, we didn't, Your Honor. We provided a
4 copy --

5 JUDGE ROSAS: Can I see it?

6 MR. MARGOLIS: Yes, we provided a copy. And, Your Honor,
7 we advised Mr. McGovern specifically last night that rather than
8 avoiding Mr. Jordan's appearance, because we know from past
9 experience that Local 3 will not have any responsive documents,
10 that he should appear regardless of his search for the documents
11 and we could deal with the documents separately. But Mr.
12 McGovern again reiterated that Mr. Jordan would not appear.

13 The Affidavit of Service is at the end of this packet,
14 Your Honor.

15 JUDGE ROSAS: So we have an Affidavit of Service,
16 indicating that it was served upon an adult of suitable age and
17 discretion and followed up with a mailing on April 4th.

18 Let's put it this way. If Mr. Jordan doesn't show up by
19 tomorrow, I'm going to have to consider potential remedies,
20 according to the Respondent. As I do in all instances, with
21 respect to subpoenas, I don't generally -- the train generally
22 leaves the station. I take very expeditious approach to these
23 proceedings. That's why I think 80 years ago or whenever it was
24 they passed up on the notion of Discovery and created this
25 forward Discovery mechanism.

1 You looked perplexed, General Counsel. But let me just say
2 that the train is going to leave the station. And I will
3 consider, among other things, sanctions under Banion Mills.
4 Okay? And any other possible remedies should Mr. Jordan not be
5 here and be responsive to the subpoena tomorrow.

6 MR. MCGOVERN: Well, Your Honor, maybe I wasn't clear. I
7 fully intended to bring him tomorrow. Today he's looking for the
8 documents of the subpoena duces tecum.

9 JUDGE ROSAS: Alright, I appreciate that understanding.
10 Alright - there's no conflicts here. Everybody has an
11 understanding of what my expectations are. Everybody is going to
12 get their due process here.

13 Is there anything else before you proceed?

14 MR. MARGOLIS: No, Your Honor.

15 JUDGE ROSAS: Are you ready to call your first witness?

16 MR. MARGOLIS: We are.

17 JUDGE ROSAS: Let's go off the record for a minute;
18 10:50:56 a.m.

19 (Discussion off the record.)

20 JUDGE ROSAS: On the record; 10:53:42 a.m. Respondent
21 calls who?

22 MR. MARGOLIS: Gregg Cory.

23 Whereupon,

24 GREGG CORY

25 having been previously duly sworn, was recalled as a witness and

1 testified herein as follows:

2 DIRECT EXAMINATION

3 BY MR. MARGOLIS:

4 Q Good morning, Mr. Cory.

5 A Good morning.

6 Q You previously testified that you worked for Time Warner
7 Cable of New York City.

8 A Correct.

9 Q And what's your job title?

10 A Vice President of Southern Manhattan for Check Ups.

11 Q How long have you held that position?

12 4½ years.

13 Q And you've been with the Company that same amount of time?

14 A Yes.

15 Q What does Southern Manhattan encompass?

16 A It's most of New York City. It's from the Battery all the
17 up to 86th Street, West and East Side.

18 Q And where are you based?

19 A 59 Paidge Avenue in Brooklyn.

20 Q Can you describe for us just the kinds of physical spaces
21 that exist in the Paidge Avenue Facility?

22 A So it's a Dispatch Center. It's a Communications Center.

23 It's a Tech Ops Center, which does installation, service,

24 repair, break fixes. It's construction. It's our Business Class

25 Customers. It's survey and design. Basically it encompasses most

1 of the Engineering job titles of the Company.

2 Q And is there a warehouse next door?

3 A Yes.

4 Q And what about a garage?

5 A Yes, there's an indoor garage and outdoor parking.

6 Q Do you have an office there?

7 A Yes, I do.

8 Q And are there other offices there?

9 A Yes, there are Executive Offices, as well as, there's lots
10 of offices. There's well over 600 people in the building.

11 Q When you say 600 people in the building, are you referring
12 to people that work there?

13 A I'm referring to -- yes, Employees that work out of that
14 building, yes.

15 Q What kinds of services does Time Warner Cable provide in
16 Southern Manhattan?

17 A We provide video service, internet service, security
18 service, and phone service.

19 Q And does the phone service include 911 service?

20 A Yes.

21 Q Are the Customers in Southern Manhattan Residential
22 Customers or Business Customers or both?

23 A Both.

24 Q Can you just briefly tell us what your job duties are?

25 A So first and foremost my job duties are to make sure that

1 the Customers are served appropriately and all of the emergency
2 issues are handled timely, and obviously the installation,
3 repair of all services.

4 Q And with respect to assuring that these services are
5 provided timely, as you mentioned, do you consider that to be an
6 important part of your job?

7 A That's number one priority.

8 Q Why is that a number one priority?

9 A Because as stated our Customers rely on our products for
10 their home burglary systems, for the Police to respond, for the
11 Fire Department to respond, to -- you know -- Medics to respond
12 in an accident or injury. So -- you know -- there are services
13 that are detrimental to people that they don't have.

14 Q To your knowledge does Time Warner Cable have any
15 competitors in the New York City market?

16 A Yes, there are lots of competitors.

17 Q Who are they?

18 A Verizon, RCN are major.

19 Q Does the presence of those competitors effect your
20 importance of assuring the service is provided timely and
21 promptly?

22 A Yes, absolutely -- if we don't serve them immediately,
23 they go somewhere else.

24 Q Now who are the Employees who ask to go out on a normal
25 day to service the Company products?

1 A They're Technicians.

2 Q And they're represented by Local 3?

3 A Yes, they are.

4 Q Can you take the stack of documents in front of you and
5 just look at the one -- turn it over and look at it, first of
6 all?

7 A Five?

8 Q I'm showing you what's been marked for identification as
9 Respondent's Exhibit R-5. And is Respondent's Exhibit R-5 an
10 aerial view of the streets in the area of the Paidge Avenue
11 Facility?

12 A Yes.

13 (Respondent's R-5 identified.)

14 Q And just to orient us on this map, where specifically is
15 the Time Warner Facility located?

16 A The Time Warner Facility is -- this entire building --
17 here's the outdoor parking lot, all the way up to here, past the
18 firehouse annex is.

19 Q And when you say here you're referring to the upper
20 portion of the photo all above Paidge Avenue?

21 A Yes, almost the entire picture.

22 MR. MARGOLIS: I move the admission of Respondent's R-5.

23 MR. ROSE: No objection.

24 JUDGE ROSAS: It's received.

25 (Respondent's R-5 received.)

1 BY MR. MARGOLIS:

2 Q Can you take a look at the next document that's there? I'm
3 showing you Respondent's R-6 for identification. Can you tell us
4 what this is?

5 A Yes, it's the entrances and exits to the facility, it's
6 numbers.

7 Q And putting aside, before we get to the numbers --

8 A Yes.

9 Q Putting the numbers aside for a moment, what does this
10 picture show?

11 A It's shows, again, a tighter aerial view of the entire
12 facility with a piece of their outdoor parking lot, the outdoor
13 parking lot is actually very large, and the indoor parking lot
14 and the rest of the building.

15 (Respondent's R-6 identified.)

16 BY MR. MARGOLIS:

17 Q So you made reference to the fact that there are certain
18 handwritten numbers, which we've inserted on this document.

19 A Yes.

20 Q And I'd like you to go through those numbers and explain
21 to us what the -- what portion of the facility those numbers
22 respond to.

23 A In order -- One is the pedestrian entrance to the
24 building.

25 Q Okay -- let me just -- I'm sorry.

1 A Okay.

2 Q Who makes use of the pedestrian entrance to the building
3 on a normal day?

4 A Employees, Delivery Men, who deliver food, anyone that
5 walks in without a vehicle.

6 Q Without a vehicle.

7 A Yes, Customers.

8 Q Okay, let's go onto Number Two. What area of the building
9 does Number Two correspond to?

10 A That is the entrance to the large indoor lot, the indoor
11 parking garage.

12 Q And who makes use of that entrance?

13 A So that's where our fleet of indoor vehicles are parked:
14 Technicians, Emergency Vehicles, Emergency Response Vehicles,
15 all of our equipment and everything is inside that parking lot.

16 Q And do Managers make use of that entrance?

17 A Yes, Managers, Foremen, Techs, an array of people, yes.

18 Q Now can you move to the left to Number Three? What are of
19 the building does Number Three refer to?

20 A Three is the warehouse entrance for deliveries, where they
21 drop off converters and equipment.

22 Q And what is that space basically?

23 A That is where 18 wheelers come and drop off reels of
24 cable, administrative documents, Fed Ex, UPS -- you know -- and
25 converters. And then also they dispatch trucks out of there to

1 bring converters to our stores in New York City, as well.

2 Q Is there a vehicle entrance from that warehouse delivery
3 bay into the garage?

4 A No, it's just a bay.

5 Q And let's move to Number Four. What does space Number Four
6 represent?

7 A It's the same thing. It's a dual bay. Three and Four are
8 the same exact -- one garage, but two doors.

9 Q And from the bay that's referred to as Number Four here is
10 there an entrance for vehicles into the garage in that place?

11 A No.

12 Q Okay, let's move on to Number Five. What area of the
13 facility does Number Five represent?

14 A That is the -- so there's a Fleet Mechanic Shop. And that
15 is where the vehicles go and get repaired. And there's a lift in
16 there and the vehicles get worked on.

17 Q Is there an entrance for vehicles from that repair area
18 into the garage?

19 A No.

20 Q Okay, let's move not Number Six. What part of the building
21 does Number Six represent?

22 A Again, the same thing as Five. It's a Vehicle Repair Shop.
23 That's the second bay and the second lift.

24 Q Is there an entrance into the garage from that bay?

25 A No.

1 Q Okay, moving onto Number Seven -- what is Number Seven?

2 A Seven is the exit to the indoor garage?

3 Q Is that a pedestrian exit or a vehicle exit?

4 A That is a vehicle exit.

5 Q And can you just give us examples of the occasions of
6 which vehicles come out that exit?

7 A Yes, the vehicles that are parked inside the building come
8 out that exit.

9 Q Does that include vehicles used by Technicians to make
10 their service calls?

11 A Yes, it's all the vehicles that enter into and they leave
12 and so.

13 Q And if you look at the next number, Number Eight, which
14 directly faces Provost Street, what is Number Eight?

15 A That is the Firehouse Annex, NYFD's annex.

16 Q And what is Number Eight specifically?

17 A What is Number Eight specifically?

18 Q Yes, is it an entrance into that facility?

19 A It's an entrance -- sorry -- it's an entrance into the New
20 York City Fire Department Annex, where they store large
21 emergency vehicles. There is no access from there to our
22 facility. It's separate.

23 Q And what is Number Nine?

24 A Nine is the exit of around the back of the building from
25 the back parking lot, an exit,

1 Q Now at the right side of R-6 is that the area that you
2 identified as a portion of the Employee parking lot?

3 A Yes, to the right side of One, there's a large outdoor
4 parking lot, as well, that Employees park in.

5 Q Is there a street outlet from that end to Paidge Avenue or
6 is it dead end?

7 A No, it's dead end to the Sewer Company.

8 Q What's behind the facility, by the way, at the top of the
9 picture?

10 A Water.

11 Q What water is it?

12 A That's the Hudson River.

13 Q And then lastly, if you look at Paidge Avenue it looks
14 like there's some white lines across the street from the
15 facility.

16 A Yes

17 Q What are those white lines?

18 A Those are parking spaces that the Employees also use to
19 park their vehicles in.

20 MR. MARGOLIS: I move the admission of Respondent's R-6.

21 MR. ROSE: No objection, Your Honor.

22 MR. MCGOVERN: No objection.

23 JUDGE ROSAS: Respondent's R-6 is received.

24 (Respondent's R-6 received.)

25 BY MR. MARGOLIS:

1 Q Did you observe any unusual events at the Paidge Avenue
2 Facility on April 2nd, 2014?

3 A Yes.

4 Q What, don't go into a whole description, but what
5 generally did you see?

6 A A blockade of the road that stopped Employees from going
7 to work.

8 Q So let's walk through your experience of that day. How did
9 you first learn of this blockade?

10 A I got a phone call from one of my Managers, Mark
11 Savarino(ph), that was in very early stating that there were
12 vehicles parking across the road and he didn't know what was
13 long on.

14 Q And what time was it approximately that you got there?

15 A Around 6:30.

16 Q What, if anything, did you do after getting that call?

17 A So I called the Director of Security.

18 Q And did you have a conversation with him?

19 A Yes.

20 Q And when you spoke to him do you know whether he was
21 already aware that these events or something was happening?

22 A He had just become aware from the Security Officers at the
23 building.

24 Q Did you give him any instructions?

25 A Yes, I told him to call the Police.

1 Q And what did you do after you had that conversation?

2 A I continued into work.

3 Q And approximately what time did you -- approximately what
4 time did you get to work?

5 A Around 6:50 a.m.

6 Q And when you arrived at Paidge Avenue can you just tell us
7 generally what you observed?

8 A I drove down Provost and I saw vehicles, a whole ruckus
9 going on in the street, people walking in the middle of the
10 street. The entire road was closed. You couldn't get down the
11 block.

12 Q And what street are you referring to?

13 A Paidge Avenue.

14 Q And when you said that Paidge Avenue was blocked, what did
15 you mean with respect to vehicles?

16 A So there were vehicles in the street, across the road, and
17 then other vehicles that were trying to get to work wind up
18 getting back to back stuck. And everyone was out of the vehicles
19 in the street. And there were people all over the place. The
20 entire street from sidewalk to sidewalk was totally blocked.
21 Nothing moved.

22 Q Now just so that we're clear, when you say cars parked
23 across the street, do you mean cars parked across the street
24 from the facility or are you describing the way that they were
25 parked?

1 A I'm saying that cars were parked in the middle of street,
2 blocking the road.

3 Q A normal or typical workday, is the routes that you
4 typically take to work up Provost and then turning right onto
5 Paidge Avenue?

6 A Yes, I take the same way every day.

7 Q On a normal workday what do you do when you arrive at the
8 corner of Paidge Avenue?

9 A I go into the indoor parking garage.

10 Q How do you get from Provost to --

11 A I make a right on Paidge Avenue, drive down to the indoor
12 parking lot, and enter.

13 Q Will you take a look again at Respondent's Exhibit R-6,
14 which is the map with numbers on it?

15 A Okay.

16 Q And the indoor parking garage, where you normally park, is
17 that what you previously identified as Location 2 on
18 Respondent's Exhibit R-6?

19 A Yes.

20 Q Does the Company have security cameras at the Paidge
21 Avenue Facility?

22 A Yes.

23 Q And do those cameras record activity on Paidge Avenue in
24 front of the facility?

25 A Yes.

1 Q And have you had occasion to review video footage from
2 those cameras relating the two events of April 2nd?

3 A Yes.

4 Q When did you first see that video footage?

5 A Probably April 3rd, April 4th.

6 Q And when you reviewed it was it consistent with what you
7 recall having seen on that morning?

8 A Yes, exactly the same.

9 Q And when you watched security video do you recall seeing a
10 time stamp on the screen?

11 A Correct.

12 Q Have you also seen still pictures excerpted from that
13 video?

14 A Yes, I have.

15 Q I'd like you to turn over the next exhibit, which is
16 Respondent's Exhibit R-7.

17 A Okay.

18 Q So, we'll mark the first page of Exhibit R-7 as R-7(a). Do
19 you recognize this picture as a still excerpted from the
20 security video?

21 A Yes, I do.

22 Q And just for the record Exhibit R-7(a) has a time stamp of
23 6:25:22 on the back.

24 JUDGE ROSAS: Counsel, can I suggest perhaps an easier
25 reference? And that's simply that it's all just Exhibit R-7 with

1 references to the pages that are attached, which are seven in
2 total and they all have distinct minute markings. The time --

3 MR. MARGOLIS: So, we'll just take the whole --

4 JUDGE ROSAS: Yes, and just reference the time.

5 MR. MARGOLIS: Sure.

6 JUDGE ROSAS: Is that alright?

7 MR. ROSE: My copy isn't attached. So I just want to make
8 sure that I've got seven. What's the 7th page?

9 JUDGE ROSAS: I counted seven.

10 MR. ROSE: Yes, but I have nine photographs.

11 MR. MARGOLIS: There actually are nine.

12 JUDGE ROSAS: There's nine here. Nine pages you are
13 correct.

14 (Respondent's Exhibit R-7 identified.)

15 BY MR. MARGOLIS:

16 Q So, on the first page of Exhibit R-7, which has the time
17 stamp of 6:25:22 at the top. There are a numbers of cars along
18 the left side of Paidge Avenue. Are those cars parked in the
19 diagonal parking space that you previously described?

20 A Yes.

21 Q And if you look up toward the top of the photo, the upper
22 right, there's a couple of vehicles that have their headlights
23 on. Do you see that?

24 A Yes, I do.

25 Q Are they taking the normal direction of Paidge Avenue?

1 A Yes.

2 Q And then if you look at the center of the picture towards
3 the bottom there's a black vehicle -- and just for the record,
4 how is that vehicle parked in relation to the flow of traffic on
5 Paidge Avenue?

6 A That is when I say that it's blocking the road, it's asked
7 in the middle of the road.

8 Q So, would you say that it's perpendicular to the flow of
9 traffic?

10 A Yes.

11 Q Do you know whose car that is?

12 A Derek Jordan.

13 Q Who is Derek Jordan?

14 A Derek Jordan is a Business Agent for Local 3.

15 Q Can you look back at Respondent's Exhibit R-6, which is
16 the large aerial view picture? And can you tell us the placement
17 of Mr. Jordan's car on Exhibit R-7, where is that car in
18 relation to the Employee parking lot that's at the end of Paidge
19 Avenue?

20 A It's in between Two and One. It's blocking the road to --
21 between Two and One.

22 Q So is it before you would get to the -- before the parking
23 lots?

24 A Yes.

25 Q And so is it before you would get to Entrance Number One,

1 which you described as the main pedestrian entrance?

2 A Yes.

3 Q Okay, let's turn to the next page of Exhibit R-7, which
4 has a time stamp of 6:40. And do you recognize this as a still
5 from the security video that you viewed?

6 A Yes, I do.

7 Q And the vehicle that's sort of in the center of the
8 picture towards the bottom, the view of it is cut off back by
9 the flagpole, whose vehicles is that?

10 A Derek Jordan.

11 Q And how is that car parked in relation to the flow of
12 traffic on Paidge Avenue?

13 A Perpendicular.

14 Q Do you see any other vehicles that are perpendicular to
15 the flow of traffic on Paidge Avenue?

16 A Yes, there's a blue Honda is the main one. There's another
17 few parked in strategic positions there.

18 Q And I want to just see if we can specify where the blue
19 Honda is. So, if you look at the right side of the photo along
20 the curb, there's a vehicle with its headlights on.

21 A Yes.

22 Q And in relation to that vehicle, where is the blue Honda?

23 A The blue Honda is perpendicular to the road. And then --
24 that's a Honda Pilot, that's parked blocking the rest of the
25 road in front of the blue Honda so no one could pass.

- 1 Q Do you know whose car that blue Honda is?
- 2 A Yes.
- 3 Q Whose is it?
- 4 A It's a Tech, Gates -- Byron.
- 5 Q Are you familiar with a Technician named Byron Yu?
- 6 A Yes, Byron Yu, sorry.
- 7 Q Is that Byron Yu's car?
- 8 A Yes, it is.
- 9 Q And just kind of proceeding up on the photo, what else do
- 10 you see above Mr. Yu's car?
- 11 A There are other cars again stranded because they can't get
- 12 past.
- 13 Q Let's turn to the next page of Exhibit R-7, which has a
- 14 time stamp of 6:55 a.m. Do you recognize this as an excerpted
- 15 from the security video that you viewed?
- 16 A Yes.
- 17 Q And is Mr. Jordan's car present in the same location as it
- 18 was before?
- 19 A Yes, it is.
- 20 Q And what about Mr. Yu's car?
- 21 A Yes, it is.
- 22 Q And what's occurring in this photo beyond Mr. Yu's car?
- 23 A Again, total gridlock -- cars are just piling up because
- 24 they can't get by. Everything is blocked.
- 25 Q Now this photo has a time stamp of 6:55 on it. What were

1 you doing at 6:55 a.m.?

2 A I was just arriving. As I said at 6:50 I arrived. So I was
3 coming down around that time.

4 Q And you described earlier your normal routine for coming
5 up Provost proceeding to the garage --

6 A Right.

7 Q On April 2nd, 2014 when you arrived -- when you came down
8 Provost and arrived at Paidge Avenue were you physically able to
9 enter the facility in the normal way by driving into the garage
10 at Location Two on Exhibit R-6?

11 A No.

12 Q Why not?

13 A The street was totally blocked. There was no way to get
14 down that street.

15 Q And when you arrived at the facility at about 6:50 or 6:55
16 a.m. on April 2nd was it possible for someone to drive down
17 Paidge Avenue into the Employee parking lot at the dead end of
18 the street?

19 A No, the road was totally blocked. There were people
20 standing all over the place. There was no way any vehicle was
21 getting was getting down that block.

22 Q So when you got to the corner of Paidge Avenue what did
23 you do?

24 A I tried to figure out a way that I could get to my office
25 because I was really concerned that Employees weren't at work

1 and we had Customers to serve.

2 Q Were you able to find a way to get to your office?

3 A Yes.

4 Q Take a look at Exhibit R-6 again, which is a large aerial
5 view. And can you tell us where on -- what -- can you tell us
6 whether Exhibit R-6 reflects the route you used to get into the
7 building -- the entrance you used to get into the building?

8 A Yes.

9 Q And where is that on Exhibit R-6?

10 A It's the exit at Nine.

11 Q That's the far left of the picture?

12 A Yes.

13 Q Now is that opening at Number Nine on Exhibit R-6 the way
14 that you would normally enter the facility?

15 A No.

16 Q How long had you been working at the Paidge Avenue
17 Facility as of April 2nd, 2014?

18 A 4½ years.

19 Q You'd been there 4½ years as of today?

20 A I'm sorry -- two years or so.

21 Q And during that time -- that is between the time that you
22 began working there and April 2nd, 2014 on how many occasions
23 prior to April 2nd had you used that driveway to get into the
24 facility?

25 A Never.

1 Q And from your experience working at the Paidge Avenue
2 Facility was that opening normally used as an entrance by other
3 people or vehicles seeking to enter the Paidge Avenue Facility?

4 A Never, it's an exit.

5 Q Now on the outside of where Number Nine is indicated on
6 the aerial view, Exhibit R-6, was there a sign on the street at
7 that location indicating that it was a Time Warner Cable
8 Facility?

9 A No.

10 Q Does Time Warner Cable ever receive deliveries anywhere at
11 the Paidge Avenue Facility?

12 A Yes.

13 Q What kinds of deliveries?

14 A Materials, equipment, UPS, food -- you know -- mostly
15 materials and equipment.

16 Q And where do people or vehicles make those various kinds
17 of deliveries that you described?

18 A They go to the loading dock.

19 Q And again with respect to Exhibit R-6 where do you -- the
20 aerial view, what are you referring to as the loading dock?

21 A Three and Four.

22 Q And when people are making, say, food deliveries, where
23 would they make food deliveries?

24 A They walk in One.

25 Q That's the main pedestrian entrance?

1 A Yes.

2 Q And as of 6:50 or 6:55 a.m. on April 2nd would someone
3 making a delivery be able to drive up to those delivery bays?

4 A Absolutely not.

5 Q And as of 6:50 or 6:55 a.m. would someone making a food
6 delivery drive up the main entrance at Location One?

7 A Absolutely not.

8 Q And to your knowledge do people or vehicles making
9 deliveries ever use that rear exit that you used on April 2nd?

10 A No, never.

11 Q Now it looks like at Location Nine on Exhibit R-6 is a
12 garage door opening, once you drive in there are you inside the
13 building?

14 A For a few feet, yes, for like 20 feet you are.

15 Q And then what happens?

16 A Then you go to the outside, which is depicted in the
17 picture. It's just an underpass.

18 Q Then you go through an underpass and then you're in like a
19 driveway?

20 A Yes.

21 Q Now when you drove your car into that exit on April 2nd
22 were you able to drive your car into the garage?

23 A No.

24 Q Why not?

25 A Because there are no entrances in the back for vehicles.

- 1 Q Is there any sort of vehicle opening in the back?
- 2 A Yes, there's an exit.
- 3 Q And describe that exit for us.
- 4 A So in the back of the building there's a roll up door that
- 5 would get you onto the path to exit out of Nine.
- 6 Q And that roll up exit door back there, is it normally kept
- 7 locked or unlocked?
- 8 A It's normally -- it's only opened from the inside. It's
- 9 normally open. It goes up with an eye.
- 10 Q And if you drive up to that door from the outside, does
- 11 the door open?
- 12 A No.
- 13 Q And is there any way to open that door from the outside?
- 14 A No.
- 15 Q And just so that we're clear is that door normally down? I
- 16 know that you said that it opens automatically if someone drives
- 17 up from the inside.
- 18 A Yes, it's always down, unless an eye captures motion to
- 19 bring it up.
- 20 Q Okay, unless an eye catches motion on the inside.
- 21 A Correct.
- 22 Q Okay -- and is there any way to open that roll up door,
- 23 for example, with a key from the outside?
- 24 A No.
- 25 Q So what did you do with your vehicle after you drove back

1 there?

2 A I parked it in the road.

3 Q And when you say road you're referring to the alley way?

4 A Yes, the alley way that you see behind there.

5 Q And after you left your vehicle in the alley what did you
6 do?

7 A I searched for anyway to get into the building.

8 Q And were you able to find a way to get into the building?

9 A Yes.

10 Q What did you find as a way into the building?

11 A I found that there's an iron fire door that was propped
12 open with a rock.

13 Q And is that fire door normally kept open or closed?

14 A Closed.

15 Q And is it normally locked or unlocked from the inside?

16 A It's normally locked from the inside.

17 Q Now if you testified that Technicians go out during the
18 day to service Customers in Manhattan do they do that with their
19 own vehicles or with Company vehicles?

20 A They do that with Company vehicles.

21 Q And do they take the Company vehicles home?

22 A No, not at that time.

23 Q And so where were -- at that time where were the Company
24 vehicles kept overnight, in Paidge Avenue?

25 A They were kept in the parking lots, in the indoor parking

1 lot and the outdoor parking lot.

2 Q And by outdoor parking lot you're referring to what I call
3 the Employee Parking Lot, the right side of Exhibit R-6?

4 A Correct.

5 Q And so do -- at that time did Technicians pick up Company
6 vehicles from those locations at the beginning of their shifts?

7 A No.

8 Q I don't mean on April 2nd, I mean in general.

9 A I'm sorry. Say that again.

10 Q On a normal workday would Technicians pick up their
11 vehicles from those locations?

12 A Yes, they drive in with their personal cars, most of them,
13 some of them take the subway or whatever. They enter the
14 building, see their Foreman, and take their vehicles, and go to
15 work.

16 Q Take their Company vehicle?

17 A Take their Company vehicle.

18 Q And just so we're clear, what do they do with their
19 personal vehicle?

20 A They park them in the spots where their Company vehicle
21 is.

22 Q And back in 2014 on a typical day, do you have an idea
23 about how many Employee vehicles would drive into the garage and
24 the Employee parking lot from Paidge Avenue say between 6:30 and
25 8 in the morning?

1 A Probably like 150 vehicles.

2 Q And again on a typical day about how many Company vehicles
3 would drive out of the garage and the parking lot at the end of
4 Paidge Avenue between 6:30 and 8 on a typical day back then?

5 A 150 vehicles.

6 Q Would it be possible to accommodate that volume of
7 vehicles coming into and leaving the facility by using only the
8 exit around the back of the building that you used to get in on
9 April 2nd?

10 A No.

11 Q Why would it not be possible?

12 A Because that's a one way that's very narrow and there's no
13 way entrance to the garage. So you'd be stuck with cars facing
14 each other.

15 Q Now on April 2nd, 2014 you describe how you got into the
16 garage. Once you got into the garage did you observe anything
17 about the roll up exit door that you told us about?

18 A Yes, there was a white Foreman's vehicle blocking the
19 exit.

20 Q And what do you mean by a white Foreman's vehicle?

21 A So our Foremen drive white Colorado's or white pickup
22 trucks. And when I walked into -- through the fire door to the
23 right that blue roll up door that we discussed, that opening was
24 blocked from the inside by a Foreman's vehicle.

25 Q What do you mean by blocked? How was the vehicle stationed

1 at the opening?

2 A The vehicle was parked in front of the opening, blocking
3 the exit.

4 Q Now where in the building is your office located?

5 A On the 4th floor, front.

6 Q I'm sorry. Did you say front?

7 A On the front of the 4th floor.

8 Q And if you could look once again at Exhibit R-6, the large
9 aerial view, and just tell us approximately where in reference
10 to those numbers where your office is on the 4th floor?

11 A Between One and Two.

12 Q Are there windows in your office?

13 A Yes.

14 Q And generally what do view do you have?

15 A The road out front.

16 Q Try to just let me finish.

17 A Sorry.

18 Q Now about what time did you get to your office on April
19 2nd, 2014?

20 A A few minutes after 7 a.m.

21 Q And when you got to your office on that day, what did you
22 do?

23 A I looked out the window.

24 Q And tell us generally what you saw when you looked out the
25 window when you got to your office?

1 A I saw the road being blocked. People standing all over the
2 place in the middle of the road. Vehicles all over the road,
3 backed up all the way down past Provost.

4 Q Can you look back now at Exhibit R-7 for identification,
5 which is a series of photos and turn to the page that has a time
6 stamp of 7:10 and 10 seconds at the top?

7 A Yes.

8 Q Does that photo accurately depict basically what you
9 observed when you got into your office on that morning?

10 A Yes, exactly.

11 Q And what, if anything -- withdrawal that.

12 When you got to your office that morning and looked out
13 the window was it possible for someone to get down Paidge Avenue
14 and into the Employee parking lot at the end of Paidge Avenue?

15 A No.

16 Q And was it possible for someone to drive down to the main
17 pedestrian entrance at Location Number One?

18 A No.

19 Q Was it possible for someone to drive down to what you
20 described as the garage entrance at Location Number Two?

21 A No.

22 Q Was it possible for someone to drive down Paidge Avenue to
23 the delivery and repair bays at Locations Three through Six?

24 A No.

25 Q And was it possible for someone to get out of the facility

1 from the exit that you identified as Location Number Seven on R-
2 6?

3 A No.

4 Q Now when you looked out the window from your office did
5 you recognize any of the people out in the street?

6 A Yes.

7 Q And who did you recognize out in the street?

8 A I recognized Derek Jordan, Phil Papale, Ralph Anderson,
9 Frank Tsavaris -- that was about it.

10 Q Can you turn to the next page of Exhibit R-7, which is the
11 photo with the time stamp of 7:26 at the top?

12 A Okay.

13 Q Do you recognize this as a still from the security video
14 that you viewed?

15 A Yes.

16 Q And what does this photo depict?

17 A Again, total blockage of the road.

18 Q And what area is it? Can you tell exactly what area?

19 A Yes, this is the end of Paidge -- the part that Paidge
20 meets Provost.

21 Q So is that the corner where you would normally turn right
22 from Provost onto Paidge Avenue?

23 A Yes.

24 Q Now while you were in your office at any point did you
25 observe a change in what was going on in front of the building

1 on Paidge Avenue?

2 A Yes, at one point I saw Derek Jordan motioning and then a
3 big crowd, all of the people that were milling around all over
4 the street, walked into the middle of the street by that blue
5 Honda.

6 Q And approximately what time would you say that happened?

7 A It was around probably 7:30.

8 Q And can you turn to the next picture in Exhibit R-7, which
9 has a time stamp of 7:39:59 at the top? Do you recognize that as
10 a still from the security video that you viewed?

11 A Yes.

12 Q And what does this photo depict?

13 A This depicts the gathering that I just stated around the
14 blue Honda, where everyone was gathered in the middle of the
15 street, blocking the road, and conversing.

16 Q And the blue Honda is the vehicle right in the center of
17 the picture? There's a vehicle in the center of the picture with
18 about four people standing in front of it.

19 A Yes, that's the blue Honda.

20 Q And to the right of that blue Honda was another vehicle.
21 And what is that?

22 A That's a black Honda Pilot.

23 Q Is that the Honda Pilot that you referred to in the
24 earlier testimony?

25 A Yes.

1 Q And is there any space on the road on Paidge Avenue where
2 a vehicle could pass this crowd and drive down to the Employee
3 parking lot?

4 A No.

5 Q And could someone drive down Paidge Avenue and get to the
6 entrance to the garage at this point?

7 A No.

8 Q Do you recall approximately how long this gathering around
9 the blue Honda lasted?

10 A About a half hour.

11 Q Can you turn to the next page of Exhibit R-7, which has a
12 time stamp of 6:55 at the top? Do you recall -- do you recognize
13 this as a still from the security video?

14 A Yes.

15 Q What does this one depict?

16 A This is the center of that gathering.

17 Q Do you recognize anyone in this picture?

18 A Yes.

19 Q Who do you recognize?

20 A Phil Papale.

21 Q Who is Phil Papale?

22 A Phil Papale was a Shop Stewart at the time.

23 Q And where is he?

24 A He is to the left with the gray shirt and the blue jacket,
25 balding.

- 1 Q And do you recognize the person immediately to his right?
- 2 A Yes.
- 3 Q Who is that?
- 4 A It's Derek Jordan.
- 5 Q When did you the blockade on Paidge Avenue come to an end?
- 6 A A few minutes after 8 a.m.
- 7 Q Can you turn to the next page in Exhibit R-7? This is the
- 8 page that has the time stamp at the top of 8:09:59. What's
- 9 depicted in this picture?
- 10 A It's the crowd starting to disperse.
- 11 Q By the way do you recognize this as a still from the
- 12 security video?
- 13 A Yes.
- 14 Q If you could turn to the next page of Exhibit R-7, which
- 15 has a time stamp of 8:25:01? Do you recognize that as a still
- 16 from the security video?
- 17 A Yes.
- 18 Q What does this one depict?
- 19 A That's the road beginning to get back to normal.
- 20 Q And between the time that you arrived in your office and
- 21 began looking outside and when the blockade ultimately broke up
- 22 did you see any Employees entering the garage?
- 23 A I'm sorry. Ask that again.
- 24 Q Between the time that you got to your office and when the
- 25 blockade finally broke up, did you see any Employees entering

1 the garage?

2 A No, I did not.

3 Q Was it possible for anyone to drive into the garage during
4 that time?

5 A No, the entire road is blocked.

6 MR. MARGOLIS: I'd like to move the admission of
7 Respondent's Exhibit R-7.

8 MR. ROSE: No objection.

9 MR. MCGOVERN: No objection.

10 JUDGE ROSAS: Respondent's Exhibit R-7 is received.

11 (Respondent's R-7 received.)

12 BY MR. MARGOLIS:

13 Q You can skip over Exhibit R-8, which has already been
14 placed in evidence by the General Counsel. And can you now turn
15 to -- well, before you turn to another exhibit -- did you take
16 any photos that day?

17 A Yes.

18 Q And can you now turn to the next exhibit, which is
19 Respondent's Exhibit R-9 for identification. Do you have Exhibit
20 R-9 for identification in front of you?

21 A Yes, I do.

22 Q And did you take this photo?

23 A Yes, I did.

24 Q And what is it a photo of?

25 A Of the vehicle that was perpendicular in the street, the

1 blue Honda, Byron Yu's vehicle with a sign in the window that
2 says 'work safe'.

3 Q And do you know when you took this photo?

4 A Around noon.

5 (Respondent's Exhibit R-9 identified.)

6 BY MR. MARGOLIS:

7 Q Why did you take the photo?

8 A Because I noticed that day that this vehicle was blocking
9 the entire road and stopped our business, impacting our
10 Customers. I knew that it was an Employee's vehicle and I wanted
11 to know whose it was.

12 Q Now other than -- by the way did you yourself take any
13 other photos that day?

14 A No.

15 Q And other than that photo that you took, do you know if
16 anyone else took photos of the events of that morning?

17 A Yes.

18 Q Can you now turn to the next exhibit that's been marked
19 for identification as Respondent's Exhibit R-10? Since this one
20 doesn't have time stamps, let's mark the first page as
21 Respondent's Exhibit R-10(a) for identification. And the second
22 page will be Respondent's R-10(b) for identification. And the
23 third page will be Respondent's R-10(c) for identification. Can
24 you take a look at these photos and tell us what they are?

25 A So the first one, R-10 is --

1 Q Actually, before you tell us, have you seen these photos
2 before?

3 A Yes, I have.

4 Q And when did you first see them?

5 A That day, that morning.

6 Q How did you come to see them? Did someone show them to
7 you?

8 A Yes, one of the Supervisors, Jerry Lombay, took these
9 pictures and showed them to me on his phone.

10 (Respondent's R-10 identified.)

11 MR. MARGOLIS: I'll move the admissions of R-10(a) through
12 R-10(c).

13 JUDGE ROSAS: How about R-9?

14 MR. MARGOLIS: R-9, I can move the admission of that, as
15 well.

16 MR. ROSE: No objection to R-9.

17 JUDGE ROSAS: No objection to R-9.

18 (Respondent's R-9 received.)

19 MR. MARGOLIS: And we're skipping R-8.

20 JUDGE ROSAS: So you're not offering R-8?

21 MR. MARGOLIS: No, I'm not.

22 JUDGE ROSAS: Do you want to voir dire?

23 MR. ROSE: Yes, Your Honor.

24 VOIR DIRE

25 BY MR. ROSE:

1 Q Mr. Cory, you said that Mr. Lombay showed you these
2 photographs on the day of?

3 A Yes.

4 Q Did he show you them in this form printed out?

5 A No.

6 Q What did he show you?

7 A On his phone.

8 Q Do you recall about what time he showed R-10(a) to you?
9 Did she show you all around the same time?

10 A Yes, he showed me them all at the same time.

11 Q About what time?

12 A It was probably around 8:30, 9 a.m.

13 MR. ROSE: No objection, Your Honor.

14 JUDGE ROSAS: Okay, Respondent's R-10(a), R-10(b), and R-
15 10(c) are received.

16 (Respondent's R-10 received.)

17 DIRECT EXAMINATION

18 BY MR. MARGOLIS:

19 Q Can you take a look at R-10(a) for us, Mr. Cory? First, at
20 the top of the photo there's some kind of structure of beams,
21 some sort of structure in the photo in the upper right.

22 A Yes.

23 Q Do you know what that is?

24 A That's the overhang over the front door, Pedestrian
25 Entrance.

1 Q So is this the -- is this photo taken from the approximate
2 location of the main entrance?

3 A Yes.

4 Q What's depicted in R-10(a)?

5 A Derek Jordan's car and then the group in the huddle and
6 then -- you know -- the road being blocked from there on out.

7 Q And when you say the group in the huddle, you're referring
8 to the group of people who came together with Mr. Jordan, as you
9 testified about earlier?

10 A Yes.

11 Q Now can you take a look at R-10(b) and tell us what that
12 depicts?

13 A That is what I'm stating as all of the people that came
14 together around Derek and Phil Papale and across the entire road
15 having conversations.

16 Q And the car at the left of this photo, R-10(b), whose car
17 is that?

18 A The Charger?

19 Q Yes.

20 A Derek Jordan.

21 Q And Exhibit R-10(c), what does that depict?

22 A That picture is Derek Jordan taking pictures of Jerry
23 Lombay.

24 Q And does that depict the same gathering that you just
25 described a moment ago?

1 A Yes.

2 Q Now you mentioned earlier that when you were on your way
3 to work you spoke to the Director of Security and asked him to
4 call the Police. Did you ever see the Police show up at Paidge
5 Avenue that day?

6 A Yes.

7 Q Did you yourself have any conversations with the Police
8 Officers?

9 A No.

10 Q Now as of April 2nd, 2014 did the Technicians work in
11 various shifts?

12 A Yes.

13 Q And as of that time what time of the morning did most
14 Technicians start their shift?

15 A 7 a.m.

16 Q Were there some started at somewhat later times, as well?

17 A Yes, there were shifts past 8:30 and a late shift.

18 Q Do you recall if there was a shift at 7:30 start?

19 A Yes.

20 Q Approximately how many Technicians were scheduled to start
21 work at 7 or 7:30 as of April of 2014?

22 A Again, around 150.

23 Q And on a normal workday what would the Technicians do when
24 they arrived?

25 A They would drive into the garage or drive into the parking

1 lot. They'd see their Foreman. There's a window where the
2 Foreman take attendance. They punch in. They see their Foreman.
3 They get their assignments for the day. They go to their
4 vehicles and exit the building.

5 Q And when they exit the building where do they go?

6 A They go to their first job, which is the largest requested
7 appointment by all Customers.

8 Q Can you explain what you mean by the largest requested
9 appointment?

10 A The earlier appointments are the most sought after
11 Customers -- you know -- appointments. So, no matter if there's
12 any days with open windows, the mornings get filled up first
13 because they want to get their issue resolved before they go to
14 work.

15 Q And on a typical work day say a Technician, whose shift
16 starts at 7 a.m. when he does the process that you described and
17 then leaves to go to the first job what, in general, what kind
18 of time would he arrive at the first job?

19 A It depends. It depends in the city, a half hours average,
20 20 minutes.

21 Q And does it matter to the business if there's an hour long
22 delay when Techs leave the garage?

23 A Yes.

24 Q Why is that?

25 A Because you miss appointments. Then you're late for a

1 Customer's appointment. Customers leave. They call complaints.
2 They leave us. Then it backs up the entire rest of the day
3 because we try to catch up.

4 Q Now when you told us earlier that after you left your car
5 outside and came into the garage, did you see any Technicians in
6 the building?

7 A Yes.

8 Q And how many Technicians did you see and where?

9 A I saw -- so when I walked through that iron door into the
10 garage I saw four Technicians sitting on an IT desk by the
11 Uniform Room.

12 Q What were they doing?

13 A Just sitting there.

14 Q And you mentioned earlier that the process is when a
15 Technician arrives to speak to the Foreman and get their
16 assignments for the day.

17 A Yes.

18 Q Was that going on when you came in?

19 A No, the lights were off and the Foreman weren't there.

20 MR. MARGOLIS: Can we have a moment off the record, Your
21 Honor?

22 JUDGE ROSAS: Off the record; 11:51:28 a.m.

23 (Discussion off the record.)

24 JUDGE ROSAS: On the record; 11:51:57 a.m.

25 BY MR. MARGOLIS:

1 Q Mr. Cory, you gave some testimony about security cameras
2 at the facility. And in particular, the cameras trained on
3 Paidge Avenue. Were those cameras in place prior to April 2nd,
4 2014?

5 A Yes.

6 Q Were they in place as long as you've worked at the
7 facility?

8 A Yes.

9 Q Have they remained in place?

10 A Yes.

11 Q Do you know why the Company has security cameras trained
12 on the Paidge Avenue Facility?

13 A To secure their assets and Employees.

14 MR. MARGOLIS: No further questions.

15 JUDGE ROSAS: Are you ready to proceed with cross or do
16 you need a minute?

17 MR. ROSE: We need about 15 minutes, Your Honor.

18 JUDGE ROSAS: Off the record.

19 (Whereupon, at 11:52:51 a.m., a break was taken.)

20 JUDGE ROSAS: On the record; 12:08:12 a.m.

21 MR. ROSE: If the Court Reporter could place in front of
22 the witness General Counsel's Exhibit GC-23(b).

23 CROSS EXAMINATION

24 BY MR. ROSE:

25 Q If you could just set that aside for a second, I just

1 wanted you to get it out so that you could easily get to it when
2 I asked you about it.

3 A Okay.

4 Q But if you could look now at Respondent's Exhibit R-5,
5 please. And look at the aerial view portion, if you would,
6 please. What is across Paidge Avenue from the Time Warner
7 Facility on Paidge Avenue? Do you know what's located there?

8 A A sewer plant.

9 Q Do you know who owns the sewer plant?

10 A No.

11 Q It's not Time Warner. Is it?

12 A No.

13 Q I believe in your testimony you said that some Technicians
14 take the subway to work to your knowledge. Is that correct?

15 A Yes.

16 Q About how many would you estimate, if you can?

17 A I would probably say 20%.

18 Q And where is, if you know, the nearest subway to Paidge
19 Avenue?

20 A It's over the Pulaski Bridge.

21 Q Is that within walking distance from Paidge Avenue?

22 A It depends on who you are. It's over a brief. There is a
23 bus that runs through there, as well. People do walk it, though.

24 Q To your knowledge people do walk it to work?

25 A Yes.

1 Q Where does the bus drop them off? Do you know?

2 A I'm not sure.

3 Q Is -- if you look at GC-5, the color portion, to your
4 knowledge, if you know, would the bus stop be anywhere in the
5 vicinity that's pictured here?

6 A No.

7 Q Paidge Avenue, is that a private street owned by Time
8 Warner to your knowledge?

9 A I don't believe so.

10 Q If you could please look at General Counsel's Exhibit --
11 well, I don't think that I have to ask you to look at it -- you
12 recall identifying the Firehouse Annex?

13 A Yes.

14 Q If you could just say what is your basis of knowledge for
15 knowing that is a Firehouse Annex and what it's used for?

16 A They're our neighbors. So I know that large emergency
17 equipment is stored there. And it's also kind of their fleet
18 headquarters, where if a vehicle has to go out of service they
19 take an older engine that's in there and bring it to the
20 Firehouse and take the damaged engine to the Annex.

21 Q Would it be fair to say that these are based on
22 conversations that you've had with the Fire Department Employees
23 over time?

24 A Yes.

25 Q Employees of -- if you could please look at Respondent's

1 R-10(a)? And if you could look at Respondent's R-6, as well, the
2 big one? So that overhang that you see in R-10(a), is that more
3 or less where the Number One is written in on Respondent's R-6?

4 A Yes, a little to the left of it, to that white column.

5 Q Is your office one of the windows on the 4th floor near the
6 white column?

7 A Yes.

8 Q Left or right?

9 A To my left.

10 Q If you were looking out the window, the column would be --
11 I'm sorry -- can you see your window on R-6?

12 A Yes.

13 Q If you could describe where it was?

14 A Again, to the left of the white column, to my left here to
15 the white column.

16 Q So Technicians who take the subway, would they enter to go
17 to work underneath the overhang in R-10(a)?

18 A Yes.

19 Q And I imagine what's -- for example, a Salesperson, who
20 wants to sell something to Time Warner would enter in that --
21 underneath the overhang, as well?

22 A Yes.

23 Q You mentioned, and correct me if I'm wrong, there was a 7
24 a.m. shift for Technicians and a 7:30 a.m. shift for
25 Technicians?

1 A Yes, there's -- remember so there's all different groups:
2 Commercial, Business, Construction, and there are various shifts
3 starting at say, 7 a.m., going into the afternoon.

4 Q Do all Technicians go out in the field, as far as their
5 jobs?

6 A So, it depends on what you call a Technician. Right? So,
7 they're -- in the Bargaining Unit they call Warehouse Employees
8 Technicians and Dispatchers Technicians, but they're not Field
9 Technicians.

10 Q I see. So, alright, I understand.

11 A The Field Technicians all go out in the field.

12 Q So the Warehouse people stay put on Paidge Avenue. Is that
13 correct?

14 A Correct.

15 Q So the Warehouse Technicians stay put. Do they have shifts
16 that start at 7 or 7:30 back then on April 2nd? Do you know?

17 A Their shifts would have to mirror the Support Systems,
18 which is the Field Techs, so yes.

19 Q Is that the same is true for Dispatch Technicians?

20 A Correct.

21 Q About how many Dispatch Technicians are there, just
22 roughly? We'll take 2014 because we're talking about that time.

23 A Probably about 75.

24 Q And Warehouse Technicians, how many?

25 A 30.

1 Q And what other -- give me examples of other Employees at
2 the Paidge Avenue Facility who would -- whose job in the
3 Bargaining Unit or not, whose job it is just to stay at the
4 facility and not go out, for example, the Clerical Staff?

5 A The Administrative folks, Warehouse, Dispatch -- there is
6 a Commercial TOC and that's about it.

7 Q TOC is an acronym, T-O-C?

8 A Yes.

9 Q Can you just explain for the record what that is?

10 A It's Technical Operations Center.

11 Q So now -- your prior testimony when yesterday and I
12 believe that you said that you were involved in the suspensions
13 and disciplines. Correct?

14 A Correct.

15 Q And you're fully aware of the evidence collected in the
16 investigation for the discipline?

17 A Yes.

18 MR. MARGOLIS: Your Honor, I'm going to object at this
19 point.

20 MR. ROSE: This is foundation for my next question.

21 JUDGE ROSAS: Okay, let's give it another question to see.

22 MR. ROSE: Okay.

23 BY MR. ROSE:

24 Q Is it true that some Field Technicians did punch in on
25 time either at the 7 a.m. or the 7:30 a.m. shift? Is that

1 correct?

2 A I don't know the answer to that.

3 Q Alright -- you were shown still shots from the security
4 video. Was there anyone operating the video camera that day to
5 your knowledge?

6 A I don't know.

7 Q If you look at, please, GC -- I'm sorry, Respondent's R-6
8 again.

9 A Okay.

10 Q I believe that Mr. Margolis asked you about white lines
11 there.

12 A Yes.

13 Q And it's correct that those white lines on Paidge Avenue
14 represent parking spaces?

15 A Yes.

16 Q Are those parking spaces reserved solely for Time Warner
17 Employees?

18 A No.

19 Q So Members of the Public with no business with Time Warner
20 can park there?

21 A Yes.

22 Q I want to ask you about -- well, if you could please go to
23 my exhibit now. I'm sorry, General Counsel's Exhibit GC-23(b).
24 I'd like to ask you some questions about that. And if you could
25 please -- you spoke about the blue Honda?

- 1 A Correct.
- 2 Q Looking at the numbers here can you identify the number
- 3 that corresponds to the blue Honda car?
- 4 A Two.
- 5 Q If you could look at Respondent's Exhibit R-10(b), please.
- 6 A Yes.
- 7 Q Do you see the blue Honda in this photograph?
- 8 A Yes.
- 9 Q Where is it?
- 10 A It's behind the three men. The one with the blue hood, the
- 11 gray hood, and then the other gentlemen -- they're standing
- 12 right between us and the vehicle.
- 13 Q And if you could look at R-10(c), Respondent's R-10(c), is
- 14 that a closer up shot of the blue Honda?
- 15 A Yes.
- 16 Q If you can go back to Respondent's R-10(b), please? Do you
- 17 see the car -- and I believe that it's a -- I see that it's a
- 18 Honda Insignia, it's the car that's with the lights on that's in
- 19 the middle of margin on the far right of R-10(c).
- 20 A Yes, the Honda Pilot.
- 21 Q The Honda Pilot -- that's the Honda Pilot. And if you look
- 22 at General Counsel's Exhibit GC-23(b), can you identify the
- 23 number of the car that is the Honda Pilot?
- 24 A Seven.
- 25 Q Could you look at Respondent's Exhibit R-7, Page 6? It's

- 1 the time stamp 7:39 and 59 seconds.
- 2 Q What time stamp?
- 3 A 7:39 and 59 seconds.
- 4 Q And do you still have Exhibit GC-23(b) in front of you,
- 5 sir?
- 6 A Is that the big one?
- 7 Q It's General Counsel's GC-23(b).
- 8 A Yes.
- 9 Q Okay, thank you -- so the -- so you see in Respondent's
- 10 Exhibit R-7, Page 6, you see the Honda Pilot. Correct?
- 11 A Correct.
- 12 Q That's the big car parked next to the sidewalk on the
- 13 right. Correct?
- 14 A Correct.
- 15 Q And you see, am I correct, the blue Honda?
- 16 A Yes.
- 17 Q And that's, as you noted before, three people are standing
- 18 in front of it in this photo on Page 6 of R-7 and the middle one
- 19 sort of has a gray hood. Is that correct?
- 20 A Yes.
- 21 Q Now if you move your gaze up from the blue Honda, up about
- 22 an inch and a half --
- 23 A In which picture?
- 24 Q Oh, I'm sorry, on Page 6 of R-7.
- 25 A R-6 of R-7.

1 Q If you move your gaze up about an inch and a half, you see
2 the windshield of a car that's facing towards the camera.
3 A Yes.
4 Q Would that be Car Number 6 on GC-23(b)?
5 A Yes, it looks to be.
6 Q And do you see on -- I'm sorry -- on Exhibit R-7, Page 6,
7 do you see at the time stamp 2014?
8 A I'm sorry. Which one?
9 Q The same one that you're looking at, Respondent's R-7,
10 Page 6.
11 A What's the time stamp?
12 Q It's 7:39:59.
13 A Okay.
14 Q So you see at the time stamp it says '2014'?
15 A Yes.
16 Q And do you see right below 2014 is a white car?
17 A Yes.
18 Q Or a light colored car?
19 A Yes.
20 Q And just next to that car between the -- would you agree
21 that between that white car and the crowd sits a car that's
22 halfway out in the street?
23 A Yes.
24 Q And if you look at GC-23(b), would you agree that's Car
25 Number 3 in GC-23(b)?

- 1 A It looks to be.
- 2 Q Now you mentioned in your testimony that the Police were
- 3 called. Is that correct?
- 4 A Correct.
- 5 Q Remind me, did you direct someone to call the Police?
- 6 A Yes.
- 7 Q Who did you direct to call the Police?
- 8 A Our Director of Security.
- 9 Q And his name is or her name?
- 10 A His name is Brian Reich.
- 11 Q Brian Reich -- is he an Employee of Time Warner or Allied
- 12 Barton, perhaps?
- 13 A No, he was an Employee of Time Warner.
- 14 Q And the security for Time Warner at the time was
- 15 contracted to Allied Barton. Correct?
- 16 A Yes.
- 17 Q So do you know if Brian Reich did, in fact, follow your
- 18 directive and call the Police?
- 19 A Yes.
- 20 Q How do you know that?
- 21 A Because we had communication after that and the Police
- 22 came.
- 23 Q How many police cars came?
- 24 A Two.
- 25 Q Two police cars came. To your knowledge did any of the

1 Police talk to anybody?

2 A So, I've been told that they walked through the center of
3 the crowd and spoke with Derek Jordan.

4 Q Am I correct to say that this is information that you
5 discovered in the investigation of the incident?

6 A Yes.

7 Q And did the investigation uncover what the response was of
8 the Police after talking to Derek Jordan?

9 A Again, what I was told was that the Police told him to
10 move and disperse and Derek said that they would.

11 Q Do you recall the names of the Allied Barton Security
12 People at that time, who were there on April 2nd?

13 A No.

14 Q Oh, if you could please look at Respondent's Exhibit R-7,
15 Page 6.

16 MR. MARGOLIS: Is that the same one we were looking at?

17 MR. ROSE: Yes, it's time stamped 7:39:59.

18 THE WITNESS: Got it.

19 BY MR. ROSE:

20 Q If you look at the photograph there's a gentleman on the
21 sidewalk on the bottom right hand corner of the photograph. Do
22 you see that gentleman?

23 A Yes.

24 Q It appears that he's holding something in his hand?

25 A Blurry eyes -- it looks like it.

1 Q You said that you were looking out that window that day.

2 Do you recall seeing that gentleman?

3 A No.

4 Q From looking at this do you know who that gentleman is?

5 A No.

6 Q Based on your knowledge of the facility do you know where
7 he's walking to?

8 MR. MARGOLIS: Objection.

9 JUDGE ROSAS: Sustained.

10 MR. ROSE: Okay, I'll withdrawal the question. Your Honor,
11 if I could have five minutes I may not have any questions.

12 JUDGE ROSAS: Okay, off the record; 12:31:39 p.m.

13 MR. ROSE: Thank you.

14 (Discussion off the record.)

15 JUDGE ROSAS: On the record; 12:38:53 p.m. Do you have
16 anything further?

17 MR. ROSE: Yes, I do, Your Honor.

18 JUDGE ROSAS: Okay.

19 MR. ROSE: I'm marking for identification General
20 Counsel's document -- two page document, General Counsel's
21 Exhibit GC-36. The last General Counsel's Exhibit was GC-34. But
22 this is because we had pre-marked another exhibit that we
23 intended to put in, but it hasn't been offered yet. So, I'll
24 just write the number here.

25 BY MR. ROSE:

1 Q Mr. Cory, to your knowledge Time Warner had the Security
2 Agents that were contracted through Allied Barton, had the
3 Security Guards on that date submit Incident Reports. Correct?

4 A If they were, I'm not aware.

5 Q Do you know who would be aware?

6 A I would assume that the Director of Security.

7 Q Anybody else at the Company?

8 A Maybe HR.

9 Q That would -- okay.

10 MR. ROSE: Well, Your Honor, this is production of a
11 business record. I would like to stipulate into evidence, even
12 though the witness can't identify it, but it is a business
13 record.

14 JUDGE ROSAS: From the Respondent?

15 MR. ROSE: Yes.

16 JUDGE ROSAS: Do you want to show it to Counsel?

17 MR. ROSE: Yes.

18 JUDGE ROSAS: Counsel?

19 MR. MARGOLIS: No objection.

20 JUDGE ROSAS: General Counsel's GC-36 is received in
21 evidence.

22 (General Counsel's GC-36 received.)

23 MR. ROSE: Yes, Your Honor.

24 JUDGE ROSAS: And what are they for the record?

25 MR. ROSE: An Incident Report, a two page document.

1 (General Counsel's GC-36 identified.)

2 JUDGE ROSAS: Okay.

3 MR. ROSE: Would you like a copy for yourself, Your Honor?

4 JUDGE ROSAS: We'll need it for the record, two sets, when
5 we're finished.

6 MR. ROSE: I have no more questions for the witness.

7 JUDGE ROSAS: Okay, Charging Party?

8 MR. MCGOVERN: No questions.

9 JUDGE ROSAS: Any redirect?

10 MR. MARGOLIS: No redirect.

11 JUDGE ROSAS: Okay, thank you sir, please don't discuss
12 your testimony with anyone until you're advised otherwise by
13 Counsel.

14 THE WITNESS: Thank you.

15 (Witness excused.)

16 JUDGE ROSAS: Are you ready with your next witness? Let me
17 just add -- off the record.

18 (Whereupon, at 12:42:47 p.m., a lunch break was taken.)

19

A F T E R N O O N S E S S I O N

2 (1:25:38 p.m.)

3 JUDGE ROSAS: On the record.

4 MR. MARGOLIS: The Employer calls Spencer Walker.

5 Whereupon,

6 SPENCER WALKER

7 having been first duly sworn, was called as a witness and

8 testified herein as follows:

9 JUDGE ROSAS: Please have a seat and state and spell your
10 name and provide us with an address.

11 THE WITNESS: My name is Spencer Walker: S-P-E-N-C-E-R; W-
12 A-L-K-E-R. Address is , Bethpage, New York.

13 DIRECT EXAMINATION

14 BY MR. MARGOLIS:

15 Q Good afternoon, Mr. Walker.

16 A Good afternoon.

17 Q Do you work for Time Warner Cable?

18 A Yes, I do.

19 Q How long have you worked for the Company?

20 A For the Company, four years, two months.

21 Q And what position do you currently hold?

22 A I'm a Tech Operation Manager with Business Services.

23 Q And what position did you hold in April of 2014?

24 A The same position, Tech Operation Manager Business

25 Services.

1 Q Do you work at a particular office or location?

2 A Yes, I work at 59 Paidge Avenue in Brooklyn.

3 Q How do you normally get to work?

4 A I drive my personal vehicle to work.

5 Q And thinking back to 2014 in general what time would you
6 typically get to work?

7 A I generally get to work about -- anywhere between 6:20 or
8 6:30, depending on traffic, within that window.

9 Q I'd like to show you a document that's in evidence as
10 Respondent's Exhibit R-6. it's been identified as an aerial view
11 of the Paidge Avenue Facility. Can you just with reference to
12 that aerial view, can you just tell us the route that you would
13 normally take when driving your vehicle?

14 JUDGE ROSAS: Is this Respondent's R-6?

15 MR. MARGOLIS: Yes.

16 THE WITNESS: Normally, Provost is on the left, in the
17 left bottom corner, I usually head up Provost, make a right on
18 Paidge Avenue, and head down towards 59 Paidge. And my usual
19 entrance is in Location Number 2, which is the last garage
20 entrance going into the garage before the parking lot.

21 BY MR. MARGOLIS:

22 Q And when you say Entrance Number 2 you're referring to the
23 Number 2 that's on the aerial view in front of you?

24 A That's correct.

25 Q Respondent's Exhibit R-6 -- and again, thinking back to

1 2014 on a typical morning when you drove up Provost to Paidge
2 Avenue would there be vehicles parked along Provost?

3 A No -- well, the only time that there would be vehicles
4 there if there was a movie shoot, if a movie was being filmed,
5 but mostly no.

6 Q Now if you look on Paidge Avenue on the right hand side
7 there's what's been identified as some parking spaces, and when
8 you on a typical day in 2014 when you would drive to work how
9 many cars would be parked in those parking spaces, if any?

10 A There would be around 8 to 10 maybe, not more than 10
11 vehicles.

12 Q Now on -- I want to draw your attention to April 2nd, 2014.
13 on that date did you come up Provost, the way that you normally
14 would?

15 A Yes, I did.

16 Q And as you drove up Provost and came to Paidge Avenue did
17 you notice anything that was unusual?

18 A Yes, I did.

19 Q And before you tell me what was unusual, can you tell me
20 what time it was that you arrived there?

21 A It was around the same time. It had to be at the bottom of
22 the hour, maybe around 6:30.

23 Q So what was it that you saw that was unusual when you got
24 to Provost and Paidge?

25 A Well, as I approached the stop sign on Provost leading to

1 Paidge I noticed about four or five vehicles parked on the
2 right, right before Paidge Avenue. Normally there's no vehicles
3 parked there, again, unless there's a movie, a filming truck or
4 some filming machinery or vehicles.

5 Q And that was on Provost?

6 A That was on Provost, correct.

7 Q And with respect to Paidge Avenue did you notice anything
8 unusual there?

9 A Yes, on Paidge Avenue I did. I usually make a right and go
10 down Paidge Avenue. But as I pulled up seeing the vehicles on
11 Provost I looked down Paidge and I saw some activity. I did see
12 maybe one or two vehicles that were blocking the Paidge Avenue,
13 along with some Pedestrians, some activity going. So, I didn't
14 think that it was safe for me to drive down in that area. So I
15 averted and went another direction.

16 Q Tell us where you went.

17 A I know that the Company has a parking lot on the left side
18 of Provost. So instead of making my normal right hand turn, I
19 made a left hand turn to park in the sort of auxiliary parking
20 lot across the street.

21 Q And again looking at Respondent's Exhibit R-6, is that
22 auxiliary parking lot what appears at the very lower left of the
23 picture?

24 A Correct.

25 Q Now can you take a look at that aerial view and do you see

1 a place that's marked Number Nine?

2 A Yes.

3 Q And do you know what Number Nine is?

4 A Yes, I do.

5 Q What is it?

6 A That's the exiting area from the parking lot in the rear.

7 Q And does it show the alley way or roadway along the side
8 of the building there?

9 A Yes, it does.

10 Q And you refer to that as an exit from the back of the
11 building. Is it a two way passageway or one way passageway?

12 A No, it's a one way passageway.

13 Q How long had you been working at the Paidge Facility as of
14 April of 2014?

15 A About 2½ years.

16 Q And during that 2½ years up until April 2nd, 2014 had you
17 ever used that rear exit to enter the premises?

18 A No, I've never.

19 Q And when you arrived on April 2nd, 2014 at Provost and
20 Paidge that you told us about did you consider taking that rear
21 exit into the facility?

22 A No.

23 Q Why not?

24 A I've never seen a vehicle exit from there. and just from
25 driving, having exit at the rear before I know that it's kind of

1 a narrow path and if another vehicle is coming out while I was
2 trying to enter through the exit, I'll have to probably back up
3 a long way to get out of -- to be clear of that vehicle that
4 exiting the correct way.

5 Q You said that you've never seen a vehicle exit the rear.
6 Do you mean that you never seen --

7 A I've never seen the vehicle enter -- enter through the
8 exit. I'm sorry.

9 Q So, after you parked your car in the auxiliary parking
10 lot, what did you do next?

11 A After I parked my vehicle -- actually I sat for a minute
12 and I kind of looked out my window and I stood up and I grabbed
13 my gear and I walked across Paidge Avenue and down the sidewalk
14 -- that would be the sidewalk where the building is located.

15 Q What, if anything, did you observe as you walked down that
16 sidewalk?

17 A Again, I observed a few cars, maybe four or five vehicles
18 that were in the roadway, meaning not in the parking spaces. And
19 about anywhere from about 15 or so people congregating towards
20 the center of Paidge Avenue.

21 Q And where did you go when you walked down the sidewalk?

22 A I walked directly straight down the sidewalk and I entered
23 through the 59 Paidge Avenue main entrance way.

24 Q Is that the entrance way that's marked as Number One on
25 that aerial view?

1 A That's correct.

2 Q And when I say aerial view I'm referring to Respondent's
3 Exhibit R-6, which you have in front of you?

4 A Correct.

5 Q So, what's your estimate of what time that it was when you
6 went into the main entrance?

7 A I went into the main entrance probably maybe about a
8 quarter to seven, fifteen minutes later.

9 Q And at some point did you -- that morning did you come
10 back out to Paidge Avenue?

11 A Yes, I did.

12 Q About what time did you think that it was that you came
13 back out?

14 A I came back out about five minutes after seven. It was
15 after 7:00.

16 Q What, if anything, did you observe get on Paidge Avenue
17 when you came out at that time?

18 A When I came out at that time I think about 20 or so
19 minutes had passed and I noticed the crowd had gotten a little
20 larger and there was more vehicles parked in the roadway of
21 Paidge Avenue and just a group gathering that had increased in
22 size so maybe around this time maybe 30 or 40 people.

23 Q And if you came out at around 5 after 7 how long do you
24 think that you stayed out there?

25 A I stayed there for about 10 or 15 minutes.

1 Q And what did you do then?

2 A After then I left to go back and communicate with my VP as
3 for the activity that I had been watching. So I went back to go
4 and check my emails and see if I had missed any phone calls at
5 my desk.

6 Q So if you came out at 7:05 and I think that you said that
7 you stayed out for maybe about 15 minutes, so about what time
8 did you go back in?

9 A Probably around 7:20 or 7:25 I went back in.

10 Q And did you ever come out again to Paidge Avenue?

11 A Yes, I did.

12 Q About what time do you think that it was that you came
13 back out?

14 A That was around 7:35 or somewhere in there.

15 Q What, if anything, did you observe when you came about at
16 about 7:30 or 7:35?

17 A At that time I did notice again an increases in the number
18 of people that were in the center of Paidge Avenue and there
19 appeared to be some type of gathering, some type of meeting
20 going on. It was at a distance, so I really couldn't hear, but I
21 did notice it.

22 Q And just to paint a picture for us, you said some kind of
23 gathering.

24 A Yes.

25 Q What you saw then when you came out at around 7:35, how is

1 it different, if it was, from what you had seen in your pervious
2 trips outside?

3 A My pervious trips outside it was kind of more looser
4 gathering. But at the time that I came out at 7:35 it seemed to
5 be a more organized circle with the center point -- a center
6 point of someone speaking and having a conversation with the
7 entire crowd. So, it was more of a sort of a meeting in process
8 at that point.

9 Q And at that point from your observation would it have been
10 possible for someone to drive a vehicle down Paidge Avenue to
11 get to the Employee parking lot or the garage entrance?

12 A No, absolutely not.

13 Q And did you become aware at any point of this gathering
14 breaking up?

15 A Yes, I did.

16 Q Approximately when did you see that?

17 A I started to notice -- I left my office at -- maybe about
18 8, ten minutes before 8:00 to go back in and run another check
19 and see what was going on to report to my VP. And as I was
20 approaching the garage door that was open I noticed some people
21 from the gathering was walking into the garage door and into the
22 front of the building, headed into the garage areas. So I was
23 going directly in the path as the crowd was kind of breaking up.
24 Maybe that time maybe it was like a quarter to eight -- I'm
25 sorry -- it was like five minutes to eight or so.

1 MR. MARGOLIS: No further questions.

2 MR. ROSE: No questions, Your Honor.

3 JUDGE ROSAS: Thank you, sir, you're excused. Please do
4 not discuss your testimony with anyone until you're advised
5 otherwise by Counsel. Have a good day.

6 (Witness excused.)

7 MR. MARGOLIS: If I could just have a moment?

8 JUDGE ROSAS: Off the record; 1:39:36 p.m.

9 (Discussion off the record.)

10 JUDGE ROSAS: On the record; 1:40:48 p.m. Your next
11 witness?

12 MR. MARGOLIS: Respondent calls Mary Maldonado.
13 Whereupon,

14 MARY MALDONADO
15 having been first duly sworn, was called as a witness and
16 testified herein as follows:

17 JUDGE ROSAS: Please be seated. State and spell your name
18 and provide us with an address.

19 THE WITNESS: Sure -- Mary: M-A-R-Y; last name is
20 Maldonado. I'll spell it: M-A-L-D, as in David, O-N-A-D, as in
21 David, O. and the address is 59 Paidge Avenue, Brooklyn, New
22 York.

23 DIRECT EXAMINATION

24 BY MR. MARGOLIS:

25 Q Ms. Maldonado, do you work for Time Warner Cable?

- 1 A Yes.
- 2 Q What position do you hold?
- 3 A Director of Human Resources.
- 4 Q How long have you worked for the Company?
- 5 A Since September of 2012.
- 6 Q At what location are you based?
- 7 A 59 Paidge Avenue.
- 8 Q By the way, were you working at Paidge Avenue on April 2nd,
- 9 2014?
- 10 A Yes.
- 11 Q Were you there that day?
- 12 A Yes.
- 13 Q Did you become familiar with some unusual events that
- 14 occurred at Paidge Avenue that occurred that day?
- 15 A Yes.
- 16 Q And just in general what happened to your knowledge?
- 17 A In general there were over 100 Employees in the middle of
- 18 the street outside of the entrance to the Paidge Facility that I
- 19 normally drive into.
- 20 Q And did you participate in an investigation of these
- 21 events?
- 22 A Yes.
- 23 Q And in terms of investigating the events, what tasks did
- 24 you perform?
- 25 A I worked with Security to obtain the video footage. And

1 then I had a couple of sessions, where Managers were invited to
2 view the footage in order to identify Employees that they
3 recognized. And after those Employees were recognized I
4 coordinated the interviews along with other HR Staff.

5 Q When you say the interviews, the interviews of who?

6 A Of the Employees that were identified as being outside
7 congregating to the entrance to the building.

8 Q Did you conduct any of those interviews yourself?

9 A I did.

10 Q Who is Bryon Yu?

11 A Byron Yu is a Technician, Time Warner Cable Employee, that
12 is dispatched out of the Paidge location.

13 Q And you mentioned that there were meetings to review the
14 security video to identify the participants. Was Mr. Yu
15 identified as a participant in those events?

16 A Yes.

17 Q Did you interview Mr. Yu?

18 A I did.

19 Q And who, if anyone, besides you and Mr. Yu were present
20 when you interviewed him?

21 A The Manager, his Manager at the time, as well as, his Shop
22 Steward.

23 Q Do you recall anything that Mr. Yu told you?

24 A Yes, he told me that he was instructed to move his vehicle
25 at a parking spot in front of the building into the middle of

1 the street. And I asked him who gave him that instruction. And
2 he told me that he was told to move the vehicle by Derek Jordan.

3 Q Did he tell you whether he complied with that instruction
4 from Mr. Jordan?

5 A He did.

6 Q He told you. And what did he say? I mean, did he did say
7 whether he complied?

8 A He did say whether or not. I asked him initially what did
9 you do. And he said, "I just initially listened."

10 And I asked him if he moved the vehicle. And she said,
11 "Yes."

12 And in subsequent conversations he continued to say yes,
13 that he was instructed by Derek.

14 MR. ROSE: Your Honor, I'd like to object to this
15 testimony on the grounds of hearsay.

16 JUDGE ROSAS: Can I ask you to just step outside one
17 moment?

18 THE WITNESS: Sure.

19 JUDGE ROSAS: While we discuss the ramifications.

20 (Witness leaves.)

21 JUDGE ROSAS: So you know the drill. If you can represent
22 that you're going to be calling an Out of Court Declarant in
23 this case, Mr. Yu, that's one approached. There might be some
24 other approaches that might corroborate this interview or
25 conversation as in interview notes that are in evidence, I

1 believe. Is that right?

2 MR. ROSE: Not for Byron Yu.

3 MR. MARGOLIS: However, they did on exactly what's about
4 to happen. Which is we intend to put in evidence the interview
5 notes, as well as, to show a snippet from the security video
6 that corroborates this testimony.

7 JUDGE ROSAS: Counsel, do you want to have a -- either a
8 ruling, voir dire or otherwise preceding that involving the
9 investigatory notes as a foundation before I rule on that. Or do
10 you want to stipulate to the receipt of the interview notes. Or
11 if you don't stipulate would you agree to the authentication of
12 them or do you want the witness to lay that foundation?

13 MR. ROSE: I'll have the witness lay the foundation.

14 JUDGE ROSAS: So, let's backtrack. Can we deal with that?

15 MR. MARGOLIS: Sure.

16 JUDGE ROSAS: I think that would be the collaboration in
17 my hearing room.

18 (Witness re-enters.)

19 BY MR. MARGOLIS:

20 Q So you were telling us that you interviewed Byron Yu. Did
21 you make any notes of your interview of Mr. Hugh?

22 A Yes.

23 Q When did you make those notes?

24 A During the actual discussion with him.

25 Q And when did you make those notes?

1 A During the actual discussion with him.

2 Q And by the way, did you right down every single word that
3 Mr. Yu said?

4 A No, the interview ranged five to over ten minutes. So, I
5 did not.

6 Q Even though you didn't write down every word was the
7 information that you wrote down an accurate reflection of what
8 Mr. Yu said at the time?

9 A Yes.

10 Q I'm just going to leave these face down at the moment.

11 A Okay.

12 Q But I want you to turn it over and look at the first one,
13 which is Respondent's Exhibit R-11 for identification.

14 MR. ROSE: And may we have a packet too?

15 MR. MARGOLIS: I think that you do.

16 MR. ROSE: Oh, we do. You just laid this -- oh, here it is
17 -- okay, thank you.

18 BY MR. MARGOLIS:

19 Q So, Ms. Maldonado, you have before you a document that's
20 been marked for identification as Respondent's Exhibit R-11. Can
21 you tell us what that is?

22 A These are the actual notes of that discussion in my
23 handwriting with Byron Yu.

24 (Respondent's R-11 identified.)

25 BY MR. MARGOLIS:

1 Q And in your notes did you record anything that Mr. Yu told
2 you about instructions from Derek Jordan?

3 A Yes.

4 Q And where is that?

5 A The bottom of Page 1 -- 'Derek Jordan asked me to move my
6 vehicle'. It says 'diagonal', but in the video you'll see that
7 it's across traffic on the street.

8 MR. MARGOLIS: I'd like to move the admission of
9 Respondent's Exhibit R-11.

10 MR. ROSE: No objection.

11 JUDGE ROSAS: Respondent's R-11 is received.

12 (Respondent's R-11 received.)

13 BY MR. MARGOLIS:

14 Q Now when you -- did you have occasion to review the
15 security video?

16 A Yes.

17 Q And when you reviewed the security video did you observe
18 anything that appeared to relate to what Mr. Yu had told you
19 about moving his car?

20 A Yes.

21 MR. MARGOLIS: Your Honor, if I could have a moment? I
22 need to tee up with a second of the video.

23 JUDGE ROSAS: Off the record; 1:49:59 p.m.

24 (Discussion off the record.)

25 JUDGE ROSAS: On the record; 1:50:45 p.m.

1 BY MR. MARGOLIS:

2 Q Ms. Maldonado, I'm about to show you a segment of the
3 security video, starting at 6:25:03. It will run for a couple of
4 minutes.

5 (Video plays.)

6 BY MR. MARGOLIS:

7 Q Ms. Maldonado, the segment of the video that you just
8 reviewed, did that relate -- when you viewed that did you
9 believe that related to what Mr. Yu had told you?

10 A Yes.

11 Q And can you describe that it was that you saw in that
12 segment of the video that you think related to what Mr. Yu had
13 told you?

14 A Sure, the first car in the middle of the street identified
15 as Derek Jordan being the Driver came out of the vehicle and an
16 Employee was approached and identified as Byron Yu. And he
17 directed him to move the vehicle to the street. And you see a
18 hand motion twice.

19 And that person then turns around and goes into the
20 vehicle as identified as the vehicle identified as Bryon Yu
21 going directly into the middle of street. And that's the second
22 part.

23 Q You say that you saw a hand motion twice. Whose hand
24 motion is that?

25 A By Derek Jordan.

1 Q What I'd like to do is go back and pinpoint the place
2 where you see the hand motions.

3 A Can you stop and maybe go back two or three seconds?

4 Q Okay.

5 A Right there.

6 Q 6:25:21 and 22?

7 A I wasn't looking at the time but that sounds about right.

8 Q Okay, the record will reflect that Ms. Maldonado is
9 highlighting 6:25:21 and 22.

10 Just so we're clear you were just noting what was
11 occurring in the video at the point that you just noted.

12 A Yes.

13 Q What was that you saw?

14 A I was seeing Derek hand motion from where vehicles were
15 parked into the center of the street twice.

16 Q And what happened immediately after that?

17 A There was the reversal of Byron Yu back to the vehicle. He
18 owns the Honda. And then pulled into the back enter, parking
19 into the middle of the street.

20 MR. MARGOLIS: Your Honor, are you prepared to make a
21 Ruling on the prior objection regarding hearsay at this point?

22 JUDGE ROSAS: You're going to renew that question now?

23 MR. MARGOLIS: Yes.

24 JUDGE ROSAS: So the pervious objection in connection with
25 that hearsay statement is overruled, based on the foundation

1 provided by Counsel.

2 BY MR. MARGOLIS:

3 Q Ms. Maldonado, did Byron Yu receive any disciplinary
4 action as the result of the events of April 2nd?

5 A Yes.

6 Q And do you recall what kind of discipline that he
7 received?

8 A He received a final written warning, as well as, a
9 suspension.

10 Q Can you take a look at the next document in the stack and
11 turn it over?

12 MR. MARGOLIS: Your Honor, I believe that this document is
13 actually in evidence as a General Counsel Exhibit.

14 MR. ROSE: It is, Your Honor. It is GC-9.

15 BY MR. MARGOLIS:

16 Q So you have before you a document that's in evidence as
17 General Counsel's Exhibit GC-9. Do you recognize that?

18 A I do.

19 Q What is it?

20 A It is the corrective action issued to Byron Yu, as well
21 as, the cover letter to that. And it is in his personal folder,
22 this document.

23 Q And in the cover letter, does it address the subject of
24 Mr. Yu moving his vehicle under the instruction of Mr. Jordan?

25 A Yes.

1 Q And were you -- did you participate in issuing these
2 documents to Mr. Yu?

3 A It was issued by Gregg Cory and I was in the meeting, as
4 well, and signed off on the document.

5 Q And did the subject of Mr. Yu moving his vehicle at the
6 instruction of Mr. Jordan come up in that meeting?

7 A It did because it was addressed in this cover letter.

8 Q And what, if anything, did Mr. Yu say about it?

9 A He actually demonstrated some gratitude to the
10 organization in that it was not a termination of him. And he
11 said that he was following the directive, yet again he told me,
12 of Derek Jordan to move the vehicle.

13 Q Ms. Maldonado, were -- Mr. Anderson, Mr. Ali, Mr.
14 Tsavaris, and Ms. Cabrera identified on the security video as
15 participants in the blockade?

16 A Yes.

17 Q Did you interview any of those four people?

18 A I did.

19 Q Which of them did you interview?

20 A I interviewed Frank, Ms. Cabrera, and Ralf.

21 Q Just so the record is clear, Ralf is Ralf Andersen?

22 A Yes, Ralf Andersen.

23 Q And Frank is Frank Tsavaris?

24 A Yes, Frank Tsavaris.

25 Q And when you met with Mr. Andersen, who was present by the

1 way besides the two of you, if anyone?

2 A It was a Manager, as well as, a Steward.

3 Q Did you ask Mr. Andersen if he had been present on Paidge
4 Avenue on April the 2nd?

5 A Yes.

6 Q And what -- how did you he respond to that?

7 A He said that he was there to speak to his Steward.

8 Q Do you remember if he said how long he had been there?

9 A I think 7 a.m.

10 Q And did you make notes of your interview with Mr.
11 Andersen?

12 A Yes.

13 Q And when did you make those notes?

14 A During the interview.

15 Q Can you take a look at the next document, which is
16 Respondent's Exhibit R-13 for identification?

17 MR. ROSE: So, Your Honor, just to be clear with regard to
18 the exhibits -- what's marked as Respondent's R-13 is actually
19 GC-16. And I'll stipulate that it's the same document.

20 (Respondent's R-13 identified.)

21 MR. ROSE: So, Respondent's R-12 was the same document as
22 -- I think that it was GC-9. And I said that it was the same
23 document.

24 (Respondent's R-12 identified.)

25 MR. ROSE: So, I'm going -- these aren't going to go into

1 the record. Correct?

2 MR. MARGOLIS: I'm happy to withdrawal.

3 JUDGE ROSAS: She can use it. We'll admit that General
4 Counsel's GC-16 is what's before her.

5 MR. ROSE: Okay -- did Mr. Margolis mark it as GC-16?

6 MR. MARGOLIS: No, I just crossed it out.

7 MR. ROSE: Okay, that's fine. I just want to know what's
8 going on.

9 BY MR. MARGOLIS:

10 Q So you're looking at a document that's in evidence as
11 General Counsel's Exhibit GC-16. Can you tell us -- is this your
12 notes of the interview of Mr. Andersen?

13 A Yes.

14 Q And in the interview did Mr. Andersen tell you how long he
15 remained outside on Paidge Avenue? Maybe you could answer
16 without looking at the notes first, and then we'll take it one
17 step at a time.

18 So, do you remember how long he stayed there, until what
19 time?

20 A He said that he remained outside until the end, but I
21 don't recall what time that was.

22 Q And do you remember if Mr. Andersen had said anything in
23 your interview about his ability to drive down the street?

24 A Yes.

25 Q And what did he say?

1 A He said that he arrived about 7:00 and that he parked
2 toward the end of the street on Provost, which is the cross
3 street to Paidge because he couldn't get down the block, down
4 the street.

5 Q Did you record in your notes a mention by Mr. Andersen his
6 inability to get down the block?

7 A Can I take a look?

8 Q Yes.

9 A Yes.

10 Q And just where is that on the document?

11 A The middle of the page, towards the right -- 'end of
12 Provost, parked diagonal, and then I could not get down the
13 block'.

14 Q Did you record in your notes how long Mr. Andersen
15 remained outside?

16 A Yes, towards the bottom third of the page, I guess.
17 'Remained outside until it broke up, 8:10 a.m.'

18 MR. ROSE: Your Honor, I have to object. This happened two
19 years ago. The first question is "Do you recall what the answer
20 was?"

21 And if she doesn't recall, she could refresh -- Mr.
22 Margolis could refresh her recollection. But it seems to be
23 getting a little messy.

24 JUDGE ROSAS: The documents speak for themselves.

25 MR. MARGOLIS: Just since these are handwritten documents,

1 I thought that it would be --

2 JUDGE ROSAS: You're trying to -- let me see the document.
3 It's in pretty good penmanship to me. They speak for themselves.
4 Let's try to stick with whatever else you need, subject to her
5 present recollection, without looking at the documents.

6 BY MR. MARGOLIS:

7 Q Ms. Maldonado, you said Mr. Andersen told you that he
8 arrived at around 7:00?

9 A Yes.

10 Q Do you recall whether there was anything in security video
11 that gave you any information about when he arrived?

12 A He arrived very early and that the large group of
13 Employees had yet to congregate. It was swarming. So there was a
14 small cluster of three or four Employees when he was observed in
15 the video for the first time.

16 Q I'd like to have you look at the next document, which is
17 Respondent's -- we're going to make it R-14 for identification,
18 which is a series of still photos.

19 (Respondent's R-14 identified.)

20 BY MR. MARGOLIS:

21 Q The first one has a time stamp of 6:36. Do you recognize
22 that first page as a still taken from the security video?

23 A Yes.

24 Q Who is the person with the yellow circle around him?

25 A That is Ralf Andersen.

1 Q And now if you could turn to the next page, which has a
2 time stamp of 6:35:55? Can you see if Mr. Andersen appears in
3 that picture anywhere?

4 A He is there, as well, yes.

5 Q Can you tell us where he is?

6 A He is to the left of Derek Jordan on the top portion of
7 the photo with the white sneakers.

8 Q If you could turn to the next page, which has the time
9 stamp of 6:36:13, does Mr. Andersen appear there?

10 A Yes, in the center of the photo.

11 Q On the next one, which has a time stamp of 6:36:14, can
12 you see Mr. Andersen in that picture anywhere?

13 A This is getting grainier. I can't identify.

14 MR. MARGOLIS: I move the admission of Respondent's R-14.

15 MR. ROSE: May I have a minute, Your Honor?

16 JUDGE ROSAS: Sure.

17 MR. ROSE: No objection.

18 JUDGE ROSAS: Respondent's R-14 is received.

19 (Respondent's R-14 received.)

20 BY MR. MARGOLIS:

21 Q I'm now going to show you, Ms. Maldonado -- actually, let
22 me ask you first. Did you interview Ms. Cabrera?

23 A Which one?

24 Q Ms. Cabrera?

25 A Yes.

1 Q And when you interviewed her to you remember if she said
2 that she was present at the events of April 2nd, 2014?

3 A Yes.

4 Q Do you remember if she gave you any explanation as to why
5 she was there?

6 A Yes, she was dropping someone off.

7 Q Did she tell you who she dropped off?

8 A She did not give me a name.

9 Q Did you make notes of the interview of Ms. Cabrera?

10 A Yes.

11 Q I'd like to show you a document that's in evidence as
12 General Counsel's GC-15. Are those the notes of the interview
13 with Ms. Cabrera?

14 A Yes, that's my handwriting.

15 Q And -- okay, and did the -- did the security video shed
16 any light on whether Ms. Cabrera was present?

17 A Yes, she was on the video.

18 Q I'd like to show you a document that's in evidence as --

19 MR. MARGOLIS: I'm looking for Respondent's R-2(a).

20 MR. MCGOVERN: It's in the right hand pile.

21 JUDGE ROSAS: R-2?

22 MR. MARGOLIS: Yes.

23 BY MR. MARGOLIS:

24 Q So, I'm showing you a document that's in evidence as
25 Respondent's R-2. Do you recognize that as an excerpt from the

1 security video?

2 A Yes.

3 Q And who is the person with the orange circle around her?

4 MR. ROSE: That's R-3(a), Your Honor. So, it's R-3.

5 MR. MARGOLIS: I'm sorry.

6 MR. ROSE: I'll stipulate that what Mr. Margolis is
7 showing is actually Respondent's R-3.

8 MR. MARGOLIS: Correct, thank you.

9 BY MR. MARGOLIS:

10 Q So, on Respondent's R-3(a), who is the person with the
11 orange circle around her?

12 A That is Ms. Cabrera.

13 Q And that is on the first page, which is at 7:52:27 of the
14 time stamp?

15 A Yes.

16 Q If you take a look at the second page of Respondent's
17 Exhibit R-3, which has a time stamp of 7:46 and 26 seconds, do
18 you see Ms. Cabrera in that picture?

19 A Yes.

20 Q And just tell us where she is?

21 A Towards the bottom on the left hand side, side profile
22 with the gray hoodie.

23 Q Did you interview Frank Tsavaris?

24 A Yes.

25 Q Did Mr. Tsavaris tell you whether he was present at the

1 events of April 2nd?

2 A Yes.

3 Q Did he offer any type of explanation as to why he was
4 there?

5 A He did not disclose. It said that it was for personal
6 reasons that he was in the area.

7 Q He said that he was in the area?

8 A Yes.

9 Q Did you take notes of your interview with Mr. Tsavaris?

10 A Yes.

11 Q I'd like to show the witness the next document, which
12 we'll mark for identification as Respondent's Exhibit --

13 MR. ROSE: GC-17.

14 MR. MARGOLIS: Oh, it's already in?

15 MR. ROSE: Yes, GC-17.

16 BY MR. MARGOLIS:

17 Q I'm sorry. It's General Counsel's Exhibit GC-17. Do you
18 recognize that document?

19 A Yes, that's my handwriting.

20 Q And are these the notes of your interview with Mr.
21 Tsavaris?

22 A Yes.

23 Q Who is Frank Cammarata?

24 A Frank Cammarata is a Time Warner Cable Employee,
25 Technician, that dispatches out of the Paidge Facility.

1 Q Did you interview Mr. Cammarata as part of the
2 investigation?

3 A Yes.

4 Q Do you recall anything that was discussed with Mr.
5 Cammarata?

6 A Yes.

7 Q What do you recall?

8 A Postings that he put on social media in relation to the
9 events on April 2nd and the day prior.

10 Q And did you ask Mr. Cammarata about Facebook postings?

11 A Yes.

12 Q Why -- or what prompted you to ask him about Facebook
13 postings?

14 A He was referencing action being taken at the Paidge
15 Facility on the evening prior to it occurring on the morning of
16 April 2nd, and then the morning of April 2nd, as well.

17 Q And when you say that he was referencing, he was
18 referencing where?

19 A The Paidge location.

20 Q Where did he make a reference to that?

21 A On Facebook.

22 Q I'd like to have you look at the next document, which
23 we'll mark as Respondent's R-15.

24 A Thank you.

25 Q I'm showing you for identification a document that's been

1 marked for identification as Respondent's R-15. Do you recognize
2 that?

3 A Yes.

4 Q What is it?

5 A It is Facebook postings by Frank Cammarata.

6 (Respondent's R-15 identified.)

7 BY MR. MARGOLIS:

8 Q When did you first see this?

9 A I would say a couple of days after April 1st.

10 Q And is this the Facebook postings that you mentioned a few
11 minutes ago in which Mr. Cammarata referenced the events at
12 Paidge Avenue?

13 A Yes.

14 Q And I believe that you said that he referenced them both
15 the day before and the day of the events?

16 A Yes.

17 Q Where is there a reference the day before to those events?

18 A April 1st at 5:37 p.m. he posted a statement saying, 'So my
19 fellow Local 3 friends tomorrow at 6:30 in front of Paidge
20 Avenue there will be a Union rally. I'm not sure what they are
21 planning to do, but I'll be there to stand up for what's left of
22 the Union.

23 MR. ROSE: Your Honor, is this being offered into
24 evidence?

25 MR. MARGOLIS: I'm sorry. I neglected to do that. I move

1 for the admission.

2 MR. ROSE: I'd like to voir dire, Your Honor?

3 VOIR DIRE

4 BY MR. ROSE:

5 Q Good afternoon, Ms. Maldonado.

6 A Good afternoon.

7 Q This document, do you know how it was collected -- how it
8 was put in the form that it is now?

9 A Collected by who? I'm unclear.

10 Q Well, that's I'm asking you. Well, if you look at it, it
11 says on the very top it says 'AT&T LTE 10:20 p.m., 23%'. Does
12 that appear to you to be a Smartphone notification or top
13 banner?

14 A AT&T is a phone service. So, I'll say yes.

15 Q So, when did you first see this document?

16 A After April 2nd.

17 Q Who gave it to you?

18 A It was provided to us by Chris Lembo.

19 Q Chris?

20 A Lembo: L-E-M.

21 Q And when you saw it did he provide it to you in this -- in
22 the form that you see it now, as it looks to you now?

23 A Yes.

24 Q Did Mr. -- is it Lombay?

25 A Lembo.

1 Q Lembo -- who is Mr. Lembo?

2 A L-E-M-B-O.

3 Q L-E-M-B-O -- and who is that gentleman?

4 A He is currently the Senior Director of Dispatch and him
5 and his team just sit at the Paidge location.

6 Q And in 2014 did he have the same title?

7 A He did not.

8 Q What was it in 2014?

9 A I don't recall. I think that it was Manager.

10 Q And Mr. Lembo handed this to you. Is that what you're
11 saying?

12 A I don't recall.

13 MR. ROSE: No objection, Your Honor.

14 MR. MCGOVERN: No objection.

15 JUDGE ROSAS: Respondent's R-15 is received.

16 (Respondent's R-15 received.)

17 DIRECT EXAMINATION

18 BY MR. MARGOLIS:

19 Q So you told us a little while ago, Ms. Maldonado, that you
20 brought up the subject of Facebook postings with Mr. Cammarata
21 in his interview. Do you recall anything that Mr. Cammarata said
22 about the Facebook posting?

23 A Yes, he was taken aback and said that information should
24 be his -- his page should be private. So he acknowledged the
25 postings, that he did the postings.

1 Q And did you make notes of the interview with Mr.

2 Cammarata?

3 A I did.

4 Q I'd like you to take a look at the next document, which is
5 marked for identification as Respondent's Exhibit R-16. What's
6 that document?

7 A This is my handwriting of the notes of the interview.

8 Q Did you take those notes during the interview?

9 A Yes.

10 (Respondent's R-16 identified.)

11 MR. MARGOLIS: I move for the admission of Respondent's R-
12 16.

13 MR. ROSE: No objection.

14 MR. MCGOVERN: No objection.

15 JUDGE ROSAS: Respondent's R-16 is received.

16 (Respondent's R-16 received.)

17 MR. MARGOLIS: I have no further questions, Your Honor.

18 JUDGE ROSAS: Cross?

19 MR. ROSE: Just a few minutes, Your Honor?

20 JUDGE ROSAS: Sure, off the record.

21 (Whereupon, at 2:19:55 p.m., a break was taken.)

22 JUDGE ROSAS: On the record; 2:24:47 p.m.

23 CROSS EXAMINATION

24 BY MR. ROSE:

25 Q Ms. Maldonado, if you could please put in front of you

1 General Counsel's Exhibits GC-15, GC-16, and GC-17?

2 JUDGE ROSAS: General Counsel's?

3 MR. ROSE: Yes.

4 MR. MARGOLIS: Mr. Rose, can you just refer to them by
5 name?

6 MR. ROSE: Sure, it would be the interview notes for Frank
7 Tsavaris, Diane Cabrera, and Ralf Andersen.

8 THE WITNESS: GC-15, GC-16, and GC-17?

9 MR. ROSE: Yes.

10 THE WITNESS: Okay, I have them.

11 MR. ROSE: Thank you.

12 BY MR. ROSE:

13 Q Ms. Maldonado, you said in your direct examination that,
14 and correct me if I'm wrong, that you saw over 100 Employees in
15 the middle of the street. Was that your testimony?

16 A Yes.

17 Q And this was -- you saw them personally? This wasn't in
18 the security video. This is -- you saw them live?

19 A On the video, on the video

20 Q Oh, so you saw them on the video. So that -- based on what
21 you saw on the video you counted over 100 Employees?

22 A Correct -- I had the option to pause and do a count.

23 Q Oh, okay -- did you include the sidewalk in that count,
24 people on the sidewalk?

25 A I cannot recall the exact portion of the video that I

1 paused to say yes or no to that.

2 Q Do you know Steven Ramgeries?

3 A Yes, he's a Manager.

4 Q Did you see him on the video? Do you recall?

5 A I did not see him on the video.

6 Q But when you were counting over 100 people on the video

7 were these all Techs? Did you make sure that you were counting

8 only Techs, or were there other people other than Techs?

9 A I cannot answer that for sure. It might possibly happen.

10 Q If you could look at -- let's look at Diane Cabrera's, if
11 you wouldn't mind?

12 A Sure.

13 Q Now these questions -- well, actually you would agree the
14 questions that were asked of Diane Cabrera, Ralf Andersen, and
15 Frank Tsavaris, as reflected on these documents, are the same?

16 A Yes.

17 Q And, in fact, this was a list of questions devised by the
18 Human Resources Department.

19 A Yes.

20 Q Were you part of the team that devised these questions?

21 A Yes.

22 Q So this was the script of questions, would you agree, that
23 you were after that you would ask -- that all of the Managers
24 would ask all the interviewees? I can repeat the question if you
25 didn't understand.

1 A Just to clarify, Human Resources did the interviews, not
2 Managers.

3 Q I understand, Human Resource Managers. Now -- so this was
4 the script that all of the Human Resources Managers were
5 supposed to ask all the Employees. Correct?

6 A Yes.

7 Q And you personally, you stuck to the script. Correct?

8 A Not in each instance, no -- it was an open dialogue, an
9 opportunity for the Employees to give their rational as to them
10 being the center of the street on April 2nd.

11 Q So you're saying that, for example, when you interviewed
12 Diane Cabrera, are you saying that you might not have asked all
13 of these questions?

14 A Correct.

15 Q Would you agree that -- now this is your handwriting, for
16 example, on Diane Cabrera's? Correct?

17 A Yes.

18 Q Would you agree that if you wrote something down next to a
19 question that indicates that you asked that question?

20 A Yes.

21 Q For example, if you could look at Diane Cabrera's. You
22 asked the question, 'How long are you working for WTC?' You
23 asked that question -- TWC, sorry?

24 A The date next to it would support that, yes.

25 Q Okay, so because you wrote the date next to it as the

1 answer that means that you asked that question. Correct?

2 A Yes.

3 Q And that's true for Diane Cabrera, Ralf Andersen, and
4 Frank Tsavaris. Correct?

5 A Yes.

6 Q Do you recall asking either Diane Cabrera, Frank Tsavaris,
7 or Ralf Andersen whether Derek Jordan was present at the event?
8 I see that you're looking down. Are you looking at the
9 documents?

10 A I'm sorry.

11 Q That's okay.

12 A The question was 'How did you know of the meeting and who
13 instructed you to be there?'

14 Q Oh, okay -- so you asked the question -- and I'm looking
15 at Diane Cabrera's and if you would look at it with me.

16 A Sure.

17 Q You asked, 'Who told you about this gathering?' Is that
18 the question that you asked?

19 A Point me to the section.

20 Q It's sort of in the middle of the page.

21 A When did you receive notification -- are you pointing to a
22 question that --

23 Q Yes, I'm pointing to a question that's printed 'Who told
24 you about this gathering?'

25 A Okay, I'm there.

1 Q So you asked that question of Diane Cabrera. Correct?

2 A Yes.

3 Q And did you also ask her 'When did you receive
4 notification of the gathering?' Correct?

5 A That is there, yes.

6 Q Did you also ask how did or was -- how did -- was this
7 event communicated to you?

8 A Yes.

9 Q You asked that question?

10 A Yes.

11 Q And you also asked the question, 'What were you told about
12 the reason for the protest?' Did you ask that question?

13 A I might have. I would need to look at each page. At some
14 instances the answer came up later in the conversation and I
15 would have annotated possibly on the second page or a margin, as
16 you can see.

17 Q I'll give you a chance to look at it, if you would,
18 because I would like to know if you asked that question and if
19 can by looking at this, answer yes or no.

20 A So to clarify, the reason -- right? Is that the question?
21 I see it further up -- a safety meeting.

22 Q Okay.

23 A Question Number 5.

24 Q I see. So, in answer to my question -- in answer to my
25 query -- did you ask the question what were you told about the

1 reason for the protest?

2 A A safety meeting.

3 Q But did you ask that question?

4 A Yes.

5 Q If you could please look at Frank Tsavaris'?

6 A Okay.

7 Q And the same question, 'What were you told about the
8 reason for the protest?' Did you ask that question of Frank
9 Tsavaris?

10 A Yes, my notes say here, 'Derek here to have a meeting'.

11 Q Now going back to Diane Cabrera's, you have some notes
12 here at the bottom. Could you explain what they are at the very
13 bottom of the first page?

14 MR. MARGOLIS: Your Honor, I'm going to object to the
15 question about what they are.

16 JUDGE ROSAS: Well, can you make out -- it's cut off --
17 right -- this copy?

18 THE WITNESS: Yes.

19 JUDGE ROSAS: Trying to read that last line, can you
20 gather from the context of what is written there, what the
21 remainder of the document stated, if you recall?

22 THE WITNESS: Reading here, I cannot.

23 BY MR. ROSE:

24 Q Actually, my question was -- you had stated that much of
25 the handwriting near the questions are answers to the questions.

1 I'm asking you what is the nature of what is written at the
2 bottom.

3 A So, with 'very reluctant'?

4 Q Yes.

5 A Okay, Ms. Cabrera in prior instances when performance was
6 brought to her attention --

7 Q I'm sorry. Are you reading from something?

8 A You're asking me why I put this. Was that not the
9 question?

10 Q I'm sorry that I interrupted you. Please continue. It
11 looked like you were reading something.

12 A I'm sorry. No, I'm giving you context as to why I wrote
13 the notes.

14 Q That's the question, thank you.

15 A Was not very participatory in the process -- would be
16 unresponsive, would have unreasonable delays, attempt to
17 disengage. She demonstrated those behaviors again during this
18 interview. So I made note of that.

19 Q Do you recall if she told you why she was very reluctant
20 to respond?

21 A I don't recall.

22 Q If you want to look at the pages to refresh your
23 recollection, please do.

24 A I don't see that I wrote anything of her rational.

25 Q If you could turn to the next page.

1 A Okay.

2 Q So, you -- does this indicate that you, in fact, asked the
3 question of Diane Cabrera 'Have you reviewed the CBA?'

4 A Yes.

5 Q And you also asked her the question 'Are you familiar with
6 the section that prohibits cessation or stoppage of work?'

7 A Yes.

8 Q By the way, do you see the question, it's underneath the
9 words that say 'for those that weren't working that day'? Do you
10 see?

11 A Yes, I do.

12 Q And is it true that Diane Cabrera was not -- was one of
13 those who was not working that day?

14 A That's correct. It was her day off.

15 Q So the question here is 'Why did you come to work?' Do you
16 see that question?

17 A I see it, yes.

18 Q She -- your investigation uncovered in any of the evidence
19 that she never entered the Time Warner Facility. Did she?

20 A Correct.

21 Q So she never came to do work. Correct?

22 A Correct.

23 Q And when it says 'Why did you come to work?' Work really
24 means why did you come to the area of the Paidge Avenue
25 location. Correct?

1 A Correct.

2 Q Now if you could please look at Frank Tsavaris' notes on
3 the second page?

4 A Okay.

5 Q I just want to confirm. This indicates that you asked Mr.
6 Tsavaris the question, 'Have you reviewed the CBA?' Correct?

7 A Yes.

8 Q And this -- can you confirm -- is it also true that you
9 asked him the question, 'Are you familiar with the section that
10 prohibits cessation or stoppage of work?'

11 A Yes.

12 Q And if you could please finally go to Ralf Andersen's?

13 A Sure, the second page?

14 Q No, the first page, please -- by the way, by looking at
15 this can you confirm whether you asked him the question whether
16 or not Derek Jordan was present?

17 A No, his name is not there at all, as I can see, in my
18 handwriting.

19 Q Well, if I could ask you look at the first page and look
20 at the line 'It appears that Derek Jordan was present, as well.'
21 Do you see where it's written --

22 A In my handwriting?

23 Q Not in your handwriting -- the printed text -- sorry about
24 that.

25 A Oh, okay.

- 1 Q Maybe I didn't ask the question clearly enough.
- 2 A Okay.
- 3 Q Do you see where it's written 'It appears that Derek
- 4 Jordan was present, as well'?
- 5 A Yes, I see that.
- 6 Q And there's a handwritten yes next to it?
- 7 A Yes, I see that.
- 8 Q Does that indicate that you asked, in fact, the question
- 9 'Was Derek Jordan present?'
- 10 A Yes.
- 11 Q So you did ask that question?
- 12 A Yes.
- 13 Q And did you ask the question of Ralf Andersen, who told
- 14 you about this gathering?
- 15 A His response was no prior notification.
- 16 Q But you asked that question. Correct?
- 17 A Yes.
- 18 Q And you also asked the question -- please confirm that you
- 19 asked the question 'When did you receive notification of the
- 20 gathering?'
- 21 A I did ask that question.
- 22 Q And did you also ask the question 'How was this event
- 23 communicated to you?'
- 24 A Can you direct me to the question?
- 25 Q It's right underneath where we were before.

1 A I don't see a response directly next to it.

2 Q How about the one directly underneath. Did you ask that
3 question, 'What were you told about the reason for the protest?'

4 A My notes say that he responded safety meeting.

5 Q So you did ask that question?

6 A Yes.

7 Q And just a final few confirmations, if you would, please.

8 On the next page, did you ask the question, 'Have you reviewed
9 the CBA?'

10 A Yes, I did.

11 Q Did you also ask him the question 'Are you familiar with
12 the section that prohibits cessation or stoppage of work?'

13 A Yes.

14 MR. ROSE: May I have one minute, Your Honor? No further
15 questions.

16 JUDGE ROSAS: Charging Party?

17 MR. MCGOVERN: No questions.

18 JUDGE ROSAS: Any redirect?

19 MR. MARGOLIS: Just a moment?

20 JUDGE ROSAS: Sure.

21 MR. MARGOLIS: A few questions, Your Honor, on redirect.

22 JUDGE ROSAS: Okay, go ahead.

23 REDIRECT EXAMINATION

24 BY MR. MARGOLIS:

25 Q Ms. Maldonado, you mentioned with respect to Diane Cabrera

1 that in the past she had expressed a reluctant to answer
2 questions.

3 A Yes.

4 Q Did she do the same thing during the course of your
5 interview concerning the events of April 2nd?

6 A Yes.

7 Q Did you tell Diane Cabrera that it would be
8 insubordination if she didn't answer your questions?

9 A I don't recall telling her that.

10 Q And if you look at your notes, which is General Counsel's
11 Exhibit GC-15, is there any reference to telling her that it
12 would be insubordination if she didn't answer your questions?

13 A No.

14 JUDGE ROSAS: Witness reviewing the document.

15 THE WITNESS: No.

16 BY MR. MARGOLIS:

17 Q Ms. Maldonado, now that you've reviewed your notes, what's
18 your best recollection as to what you said to her? It's
19 insubordination if you don't answer my questions.

20 A I don't recall saying that. So I can't answer that.

21 MR. MARGOLIS: Nothing further, Your Honor.

22 JUDGE ROSAS: Okay, anything further on that?

23 MR. ROSE: No, Your Honor.

24 JUDGE ROSAS: Thank you, Madam, you're excused. Don't
25 discuss your testimony with anyone until you are advised by

1 Counsel that the record in this case is closed.

2 THE WITNESS: Okay, thank you.

3 (Witness excused.)

4 JUDGE ROSAS: Off the record; 2:45:37 p.m.

5 (Discussion off the record.)

6 JUDGE ROSAS: On the record; 2:47:31 p.m. We are going to
7 conclude at this point. And we'll resume at 9:30 or 10, which do
8 you guys refer?

9 MR. ROSE: 10:00 is good, Your Honor.

10 JUDGE ROSAS: 10 a.m. -- okay, see you tomorrow. Off the
11 record.

12 (Whereupon, at 2:47:47 p.m., the hearing in the above-entitled
13 matter adjourned, to reconvene on Wednesday, April 13, 2016, at
14 10:00 a.m.)

15

1

C E R T I F I C A T E

This is to certify that the attached proceedings done before the
NATIONAL LABOR RELATIONS BOARD REGION TWO

In the Matter of:

TIME WARNER CABLE NEW YORK CITY, LLC

Respondent,

And

INTERNATIONAL UNION OF ELECTRICAL WORKERS, AFL-CIO, Local 3

Charging Party

Case No. 02-CA-126860

Date: April 12, 2016

Place: New York, NY

Were held as therein appears, and that this is the original
transcript thereof for the files of the Board

Official Reporter

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BEFORE THE
NATIONAL LABOR RELATIONS BOARD

In the Matter of:

TIME WARNER CABLE NEW YORK
CITY, LLC,

Respondent,

And

LOCAL UNION NO. 3 INTERNATIONAL
BROTHERHOOD OF ELECTRICAL
WORKERS,

Charging Party.

Case No. 02-CA-126860

The above-entitled matter came on for continued hearing pursuant to Order, before THE HONORABLE MICHAEL A. ROSAS, Administrative Law Judge, at the National Labor Relations Board, Region 2, 26 Federal Plaza, 36th Floor, New York, New York, 10278, on Wednesday, April 13, 2016 at 10:00 a.m.

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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
Gregg Cory	318	--	--	--	--
Derek Jordan	357	394 396	--	399	--
Connie Ciliberti	401	431	--	--	--

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<u>EXHIBIT NUMBER</u>	<u>E X H I B I T S</u> <u>IDENTIFIED</u>	<u>RECEIVED</u>
General Counsel's:		
GC-30	(prev)	396
GC-35	434	440
GC-37	318	319
GC-38	318	321
GC-39	434	440
GC-40	434	443
GC-41	435	441
GC-42	435	443
GC-43	435	443
GC-44	435	443
Respondent's:		
R-17	330	333
R-18	333	333
R-19	334	335
R-20	338	356
R-21	361	363
R-22	402	404
R-23	403	405
R-24	409	414
R-25	414	416

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<u>EXHIBIT NUMBER</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>
Respondent's: (Continued)		
R-26	417	420
R-27	420	421
R-28	422	423
R-29	423	425
R-30	425	425
R-31	425	426
R-32	432	432
R-33	432	432
R-34	433	433
R-35	433	433

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1 MR. MARGOLIS: Are these my copies?

2 MR. ROSE: Yes.

3 JUDGE ROSAS: Are you ready to proceed? You have
4 recalled Mr. Cory?

5 MR. ROSE: Yes, I have, Your Honor. And can I have a
6 representation as to authenticity from Mr. Margolis?

7 MR. MARGOLIS: Yes.

8 JUDGE ROSAS: Can you identify it? What are you
9 designating?

10 MR. ROSE: I'm designating a two-page document. It's an
11 email and attachment, GC-37 and email one page, GC-38.

12 May I approach to give the documents to the witness and
13 the court reporter and Your Honor.

14 (General Counsel's GC-37 and GC-38 identified)
15 (Whereupon,

16 GREGG CORY,
17 having been re-called as a witness by and on behalf of General
18 Counsel and having been first duly sworn, was examined and
19 testified on his oath, as follows:)

20 DIRECT EXAMINATION

21 BY MR. ROSE:

22 Q. Mr. Cory, could you please look at GC-37?

23 A. Yes.

24 Q. We met Spencer Walker yesterday. He gave testimony,
25 correct?

1 A. Correct.

2 Q. Could you please identify, if you know, if you look at the
3 "To" line of the email, Bill Lissemore.

4 A. Yes.

5 Q. What's his job title?

6 A. He's the RVP of business class.

7 Q. What does RVP stand for?

8 A. A regional vice president.

9 Q. And who is Keith Vivona?

10 A. He is the area vice president of business class.

11 Q. And is there any line of authority of Keith Vivona with
12 respect to -- well, no, I withdraw that question.

13 MR. ROSE: Your Honor, I offer GC-37 into evidence.

14 MR. MCGOVERN: No objection.

15 MR. MARGOLIS: No objection.

16 JUDGE ROSAS: General Counsel's 37 is received.

17 (General Counsel's GC-37 received)

18 BY MR. ROSE:

19 Q. And if you go to GC-38, please, and if you look at the
20 "From" line of this email, who is Justin Finnerty?

21 A. He is a manager in business class.

22 Q. What is, if any, the line of authority or the relationship
23 between Azeam Ali and Justin Finnerty?

24 A. I don't know.

25 Q. In 2014, if you know?

1 A. I don't know.

2 Q. Mr. Finnerty wasn't Azeam Ali's supervisor at the time?

3 A. I don't know.

4 Q. You don't know. How about Bill Lissemore?

5 A. I don't know.

6 Q. Do you know where Azeam Ali worked, what dividend, was it
7 business class --

8 A. Yes.

9 Q. -- back in 2014? Okay. So Justin Finnerty, Bill
10 Lissemore and Keith Vivona all are in the business class
11 division?

12 A. Yes.

13 MR. ROSE: All right. Your Honor, I offer this into
14 evidence as GC-38.

15 MR. MCGOVERN: No objection.

16 MR. MARGOLIS: Your Honor, I'm going to object on
17 relevance grounds; a random comment by someone who has not been
18 identified as having any role in the relevant facts.

19 In other words, there's been no foundation as to what
20 these people have to do with Azeam Ali or have to do with the
21 personnel actions in question. It doesn't seem to be relevant
22 in nature.

23 MR. ROSE: Well, Your Honor, I could point to the record
24 of Keith Vivona having signed and Justin Finnerty having signed
25 the relevant discipline documents for Mr. Ali.

1 JUDGE ROSAS: All right. I'm going to overrule the
2 objection. We determined reviewing the record as a whole as to
3 what relationship if any they had to the events at issue in
4 this case. I'm going to overrule the objection and receive the
5 document. General Counsel's 38.

6 (General Counsel's GC-38 received)

7 BY MR. ROSE:

8 Q. Okay. Actually, I forgot. I did have a question for you,
9 Mr. Cory about GC-37. Is that before you?

10 A. Yes.

11 Q. Okay. Could you look at page 2?

12 A. Sure.

13 MR. ROSE: And may I ask the court reporter to please
14 provide the witness with GC-18.

15 COURT REPORTER: They're in front of him.

16 MR. ROSE: Okay. It's in a pile in front of him?

17 COURT REPORTER: Yes.

18 JUDGE ROSAS: It's on your left.

19 THE WITNESS: It's on my left. I got it.

20 MR. ROSE: Thank you.

21 BY MR. ROSE:

22 Q. Okay. If you could please look at page 2 of General
23 Counsel's 37, you notice to the left, I think, would you agree
24 that it's a series of garages?

25 A. Yup.

1 Q. Garage entrances or exits. And would you agree that one
2 of them has -- does it look like a rolling garage door?

3 A. Yes.

4 Q. With the number on GC-18 could you identify that rolling
5 door?

6 A. There's no number in GC-18.

7 Q. Oh, I'm sorry, 18B, sorry.

8 A. It's all right. Yeah, it looks like it's -- they're doors
9 4 and 5.

10 Q. Okay. So 4 is the one that's closest -- well, let's just
11 try to figure out which you're referring to. Four is --

12 A. They're both the same doors, so remember in my testimony I
13 stated that these are fleet mechanic lifts where there's no
14 entrance into the building. Those are not vehicle entrances or
15 exits. It's a mechanic shop.

16 Q. Okay. If you could describe -- I'm only asking because,
17 you know, it's kind of hard to --

18 A. I get you.

19 Q. I just want to make sure. If you could describe in words
20 by looking that black and white photograph --

21 A. Okay.

22 Q. -- which are you -- which door are you saying is 5?

23 A. Five is the one closer towards the -- down the block.

24 Q. Okay. Down the block towards the --

25 A. Four is the first one. Five is the second one.

1 Q. Okay. So the -- you see -- I think there's -- if you look
2 at the top right corner there's a little circle of light.

3 A. Yeah.

4 Q. That looks like a lamp?

5 JUDGE ROSAS: You're referring to the top left corner of
6 the photograph?

7 MR. ROSE: I'm sorry, top left -- top left corner.

8 THE WITNESS: I see the light, but I don't --

9 BY MR. ROSE:

10 Q. Yeah, it's a white circle.

11 A. Yeah, no, I see it.

12 Q. Okay. And it is -- does it look like it's between two
13 garage doors?

14 A. Yeah.

15 Q. Okay. Which is the garage door if you're facing the
16 garage door on the left of that, that white circle?

17 A. Four.

18 Q. Four. And on the farther side of the white circle is 5?

19 A. Correct.

20 MR. ROSE: Okay. That's all. Thank you very much,
21 Mr. Cory. I have no further questions for the witness, Your
22 Honor.

23 JUDGE ROSAS: No cross from the Charging Party?

24 MR. MCGOVERN: No.

25 JUDGE ROSAS: Any follow-up?

1 MR. MARGOLIS: No, Your Honor.

2 JUDGE ROSAS: Thank you, sir. You're excused.

3 THE WITNESS: Thank you.

4 (Witness is excused.)

5 MR. ROSE: One last matter, Your Honor, before General
6 Counsel rests its case in chief. General Counsel put in --
7 offered into evidence GC-3, which is Respondent's motion for
8 summary judgment and I offered it into evidence without the
9 exhibits and I said on the record that I understood there were
10 exhibits and that I would provide the exhibits in order to make
11 a complete document.

12 On further reflection, Your Honor, the exhibits which
13 number nearly 300 pages, the General Counsel takes the position
14 that they have no place in the record. They're not relevant.
15 I offered the motion for the narrow purpose of a party opponent
16 admission of facts and the exhibits have nothing to do with
17 that narrow purpose. And I would like a ruling, Your Honor,
18 that the exhibit can stay in the record as received in the
19 record as-is without the exhibits.

20 JUDGE ROSAS: Well, it can certainly stay in in the
21 manner that you put it in but now the question is whether
22 anybody else wants to supplement that to provide proper context
23 is up to anybody else.

24 MR. ROSE: Okay. Thank you, Your Honor.

25 MR. MARGOLIS: As long as we're on that subject, I

1 intended today to do that very thing.

2 JUDGE ROSAS: Not the whole thing, right?

3 MR. MARGOLIS: Well, the exhibits, copies of the
4 exhibits.

5 JUDGE ROSAS: The entirety of it?

6 MR. MARGOLIS: Yeah, it's not too voluminous. And so
7 what I intended to do today is to supplement that with the
8 exhibits so that it's a complete document and to put in the
9 other motion papers put in -- filed by Respondent in support of
10 its motion because there were two subsequent filings in support
11 of the motion.

12 JUDGE ROSAS: It's probably cleaner that way, although I
13 think that the fact that all of this has been -- and I skimmed
14 some of this stuff over the weekend. You know, I have other
15 pleasure reading to do on weekends than read all of that motion
16 practice, but I kind of got a flavor for what was to be
17 expected and the Board could arguably take administrative
18 notice, as could I, of what's been filed with respect to the
19 motion. But I think for purposes of facilitating the arguments
20 on the briefs, we ought to put forward what we intend to rely
21 on and argue. All right.

22 I'm not a big proponent, again, I'm speaking in the
23 abstract, of having parties dig into something in the record
24 that might be pertinent that wasn't explored during the record,
25 subject to cross examination, you know. It's always perilous

1 to ignore that stuff because you all can say anything you want
2 on exception. You know, it's a free world, but I will just
3 tell you that, you know, in practice I think it's important to
4 get it out on the record, okay, as to what you're going to rely
5 upon so the other side can address, so I have all of the
6 arguments and I can make a meaningful and informed decision.
7 Okay.

8 MR. ROSE: Your Honor, I would like to place an
9 objection on the record. An extended objection and if I could
10 place an extended objection --

11 JUDGE ROSAS: Go ahead.

12 MR. ROSE: -- I could refer to it later on and say see
13 my objection earlier rather than keep repeating it.

14 It's the General Counsel's position that the universe of
15 the arbitration award awarding damages from the Union to the
16 Employer, the universe of the Boys Market Injunction 301 suit,
17 the universe of the confirmation of the arbitration award, not
18 only is much of a hearsay, but it is irrelevant.

19 JUDGE ROSAS: Hearsay?

20 MR. ROSE: Well, yeah, the transcript pages, et cetera
21 but -- or a judge's decision could be hearsay or an
22 arbitrator's award could be hearsay, but that's not the
23 important point here.

24 The important point is that none of that universe has
25 any legally binding affect on what's before Your Honor. None

1 of it has any preclusive affect.

2 As a matter of fact, in Judge Weinstein's decision
3 affirming the arbitration award, he had his own opinion on why
4 his own decision in the arbitration have absolutely no
5 preclusive affect on Your Honor's -- what's before Your Honor.

6 Now -- and if absolutely necessary, I could put that in.
7 The Board had its own opinion different from Judge Weinstein
8 when it intervened on why the arbitration had no affect on
9 what's before Your Honor.

10 What does have affect is the Board's decision in 363
11 NLRB 30. In essence, that is why we're here today. If it
12 wasn't for that decision, we wouldn't be here and that decision
13 is not a narrow one as Mr. Margolis referred to it as in his
14 opening. It's a very straight forward decision on a Hindes
15 violations.

16 Board law provides that if there is no meeting of the
17 minds on all material -- on substantive issues and material
18 terms, there is no contract. It doesn't matter what that
19 substantive issue or material term is as long as it's
20 substantive and material.

21 In this case, it was the riders. Board Law does not
22 permit to pick and choose, well, that there was no meeting of
23 the minds on this substantive issue, but all other substantive
24 issues, yeah, there was a meeting of the minds. That's not
25 Board Law.

1 There was no contract period. And because there was no
2 contract, as of March 2013, as clearly said by the judge,
3 there's no "No-strike clause" in effect.

4 Now, the Board speaks to this case through Footnote 1
5 and General Counsel would object to any kind of re-litigation,
6 any kind of evidence that could have been put into that case
7 being put in here to prove the existence of a contract of a
8 no-strike clause.

9 General Counsel also objects as to anything post-hearing
10 based on -- both based on the reasoning of Footnote 1 and if
11 the -- if the respondent intends to put that kind of evidence
12 on, we would object to it.

13 So that's my objection and it's on the record and I
14 guess we can proceed and General Counsel can rest its case in
15 chief.

16 JUDGE ROSAS: Well, it seems to me the converse of the
17 Board's ruling that the Respondent wasn't entitled to summary
18 judgment because as the Board may tersely frequently responds
19 to these motions before hearings, failed to demonstrate the
20 entire absence of any material issues of fact. Of course, tell
21 us what issues there are or what is absent.

22 The converse of that is that the General Counsel didn't
23 get summary judgment either and didn't seek summary judgment as
24 it does in other instances where say there's a default but
25 that's not the only times it does it.

1 So there were issues of fact here. The Respondent, I
2 understand what your position is. The Respondent -- there's
3 been no motion in limine at the outset of this proceeding in
4 order for me to make an informed decision on whether or not to
5 prune the record, limit any evidence or proceed down the path
6 as you suggest or some other path.

7 So I'm going to receive the record and I'm going to
8 consider it. Counsel for the Respondent -- Counsel for General
9 Counsel has essentially made -- provided your arguments in
10 response to the anticipated motion to dismiss based on failure
11 to make out a prima facie case, which I would respond as
12 decision reserved, so we're moving on to Respondent's case at
13 this time.

14 MR. ROSE: One note, Your Honor, just in terms of
15 process. I don't know what documents Respondent is going to
16 put in, but as a rebuttal case, we can put in documents.

17 JUDGE ROSAS: I think you're shortly going to find out.

18 MR. ROSE: Okay. But I'm saying --

19 JUDGE ROSAS: Well, I think he -- I thought he alluded
20 to a lot of them.

21 MR. ROSE: No, I understand. I understand. But as in
22 our rebuttal case we would have to put in documents.

23 JUDGE ROSAS: You're entitled to rebuttal. Absolutely.

24 MR. ROSE: All right. Okay.

25 MR. MARGOLIS: So Your Honor --

1 JUDGE ROSAS: So they rest. With that you rest?

2 MR. ROSE: Yes, Your Honor.

3 MR. MARGOLIS: So in the interest of orderly procedure I
4 think we should address also these issues now in terms of
5 exhibits and documents.

6 With respect to the filings on the motion for summary
7 judgment, may we mark those and introduce those now?

8 JUDGE ROSAS: You can try. I'm not going to tell you
9 what to do.

10 MR. MARGOLIS: Okay. So I'm going to ask the reporter
11 to mark as Respondent's Exhibit 17 the document that is
12 essentially the exhibits to the motion for summary judgment and
13 they are exhibits that are attached to a declaration of Kevin
14 M. Smith dated February 4, 2016.

15 (Respondent's R-17 identified)

16 JUDGE ROSAS: And you want to put your proffer on the
17 record?

18 MR. MARGOLIS: Yes, Your Honor. The proceedings on the
19 motion for summary judgment, which I emphasize don't relate to
20 the issue of there being a contract or no contract. They
21 relate to a different issue. They relate to the issue of
22 whether the conduct engaged in on April 2, 2014 was conducted
23 protected by the Act. That was the basis for the motion for
24 summary judgment and the motion for summary judgment sets
25 forth, among other things, the prior proceedings before an

1 arbitrator and before the U.S. District Court Judge Weinstein
2 relating to what happened on April 2, 2014 and so on that
3 basis, since the issues before you involve primarily what
4 happened on April 2, 2014, the findings and proceedings before
5 these other tribunals relating to the events on that same date
6 are clearly relevant to the issues before you.

7 They're part of the official record before the Board in
8 any event and so we think they should be admitted as exhibits
9 before you.

10 JUDGE ROSAS: Counsel for General Counsel, as you've
11 indicated previously and Charging Party, I assume you all
12 object for the reasons you previously stated?

13 MR. ROSE: Yes, Your Honor.

14 JUDGE ROSAS: What I would ask is: Have you had an
15 opportunity to review the documents to essentially authenticate
16 them as the exhibits?

17 MR. ROSE: I have not. This is what I propose,
18 actually, since the documents might be voluminous. He could
19 offer me the documents. I will assume that they're correct for
20 now, but we would like to, you know, after the case is over,
21 after Respondent's case has rested, we could look at the
22 documents, have a little time to review, do some comparisons
23 and then decide which documents we want to put in in response.

24 JUDGE ROSAS: Well, these are documents that unless you
25 can tell me you think it might be pertinent to further witness

1 testimony, it doesn't sound like it, this all falls within the
2 purview of providing entire context supplementing an exhibit
3 that you offered, as well as providing, as General Counsel is
4 very familiar with, procedural background that is relevant to
5 at least one of the parties in the litigation.

6 So what my practice is in that case is to close the
7 record and within a reasonable period of time after we close
8 the record, you've had an opportunity to look at it, if there
9 is some kind of mistake, because obviously, there's the stuff
10 that was filed with the Board.

11 MR. ROSE: Understood. Understood.

12 JUDGE ROSAS: So you could do the --

13 MR. ROSE: Understood.

14 JUDGE ROSAS: You could do the comparisons. You won't
15 get shortchanged.

16 MR. ROSE: Understood.

17 MR. MARGOLIS: And Your Honor, I'll represent that the
18 copies of this exhibit, Respondent's Exhibit 17, was printed
19 off the Board's website this morning by myself.

20 JUDGE ROSAS: Okay. So you haven't Bates stamped them,
21 right?

22 MR. MARGOLIS: I haven't.

23 JUDGE ROSAS: But they are the entirety of the documents
24 that are on the Board's website in an identical fashion?

25 MR. MARGOLIS: Exactly.

1 JUDGE ROSAS: Okay. So I'm going to receive
2 Respondent's Exhibit 17 over objection.

3 (Respondent's R-17 received)

4 MR. MARGOLIS: Along the same lines, Your Honor, we'd
5 like to mark as Respondent's Exhibit 18 for identification an
6 amended -- the amended motion for summary judgment, which was
7 filed on March 7, 2016 and again, a declaration of Kevin M.
8 Smith which is dated March 7, 2016. And for context what the
9 amendment to the motion did was to address some amendments to
10 the complaint.

11 In other words, as ordinarily filed, the complaint named
12 only one alleged discriminatee, Diana Cabrera. The complaint
13 was subsequently amended to add three more discriminatees so
14 the amended summary judgment motion was directed to the amended
15 complaint, so I'm going to ask that this be marked as
16 Respondent's Exhibit 18 for identification.

17 (Respondent's R-18 identified)

18 JUDGE ROSAS: And this is in the same category as the
19 previous exhibit, same objection?

20 MR. ROSE: Yes, Your Honor.

21 MR. MARGOLIS: Yes.

22 JUDGE ROSAS: The objection is overruled. I'll receive
23 Respondent's Exhibit 18.

24 (Respondent's R-18 received)

25 MR. MARGOLIS: Do you need a set, Your Honor?

1 JUDGE ROSAS: I need to have a set to give to -- my set
2 goes to the reporter.

3 COURT REPORTER: I have two.

4 MR. ROSE: Can I ask, Mr. Margolis. Is this R-19?

5 MR. MARGOLIS: No, this is R-18. I was making them one
6 exhibit. One is just the motion and the declaration.

7 MR. ROSE: Okay. I get it. So this is the second half
8 of, more or less, R-18. I understand.

9 MR. MARGOLIS: And then lastly on this point, Your
10 Honor, Respondent's Exhibit 19 for identification is another
11 document that was filed in support of a motion for summary
12 judgment. It's captioned "Supplement to Motion for Summary
13 judgment by Time Warner Cable of New York City, LLC."

14 (Respondent's R-19 identified)

15 MR. MCGOVERN: Do you have any copies for me?

16 MR. MARGOLIS: Yes.

17 MR. MCGOVERN: Well, these are two. You have three
18 exhibits.

19 MR. MARGOLIS: I did give you.

20 MR. ROSE: I believe he did give you.

21 MR. MCGOVERN: Maybe it's that pile there.

22 MR. ROSE: No, that's not it.

23 MR. MARGOLIS: Your Honor, okay, so those three exhibits
24 complete our submissions with respect to the --

25 MR. MCGOVERN: Excuse me. I don't have a copy of 17, I

1 believe.

2 MR. MARGOLIS: You know, I've exhausted my copies of
3 that, actually. As I said, I printed it off --

4 JUDGE ROSAS: Do you want to give him one of yours in
5 the meantime?

6 COURT REPORTER: Sure.

7 MR. MARGOLIS: So those three exhibits complete our
8 filing with respect to the motion for summary judgment.

9 (Respondent's R-19 received)

10 MR. MARGOLIS: Mr. Rose raised another issue which is
11 the issue relating to the defense which we alluded to in our
12 opening, which was that the conduct of April 2, 2014 was not
13 protected by the Act both because it constituted a mass picket
14 and blockade and because it was conduct that violated a
15 no-strike agreement that was enforced between the parties at
16 that time.

17 In order to make the record on that issue -- well,
18 before I talk about how we would make the record on that issue,
19 we obviously take issue with the position espoused by Mr. Rose
20 with respect to the scope and affect of the Board's decision in
21 the Heinz case. There was only one issue presented to the
22 Board in that case and the issue was: Did the document that
23 was tendered by Time Warner Cable to the Charging Party here
24 constitute an accurate statement of the parties' oral
25 collective bargaining agreement?

1 That was the sole issue and the complaint was dismissed
2 on the grounds that there was not a meeting of the minds as to
3 whether the riders were to continue in effect. And once there
4 was a determination, which we disagree with, of course, but
5 once there was a determination that there was not a meeting of
6 the minds on whether the riders continue in effect, that
7 disposed of the case. Because if there was not a meeting of
8 the minds on the riders, then the document that Time Warner
9 Cable tendered was not something that the Charging Party here,
10 Local 3, was obligated to sign. End of the case.

11 The Board was not concerned with and it was not
12 presented with a broader issue of whether there was a
13 collective bargaining agreement of any kind in place between
14 the parties. That was not the issue before the Board.

15 And in fact, Footnote 1 does not address that issue
16 because that wasn't the issue before the Board. Footnote 1
17 addresses whether the document as tendered by Time Warner Cable
18 accurately reflected the agreement of the parties and the
19 evidence that Time Warner Cable sought to introduce by way of
20 its motion to reopen the record, the Board concluded, did not
21 bear on that issue.

22 That is, it did not bear on the issue of whether the
23 riders were to continue in effect or not continue in effect,
24 which, again, was the sole issue before the Board.

25 So we disagree in the strongest possible terms that the

1 Board has somehow decided this issue or that we are precluded
2 from litigating the issue here.

3 Now, with respect to how we go about doing that, it's a
4 rather simple matter because the position that we take which is
5 that there was a binding agreement between the parties flowing
6 from March 28, 2013 memorandum of agreement and what transpired
7 thereafter is overwhelmingly and readily established by
8 documents. And they are the documents, again, that I referred
9 to in our opening.

10 They are documents that are completely indisputable in
11 terms of their authenticity. Most of them are documents that
12 emanate from the Union and others are testimony given by the
13 Union, positions taken by the Union before a Federal judge.
14 It's not like there's any dispute about these documents, so
15 because of that, yesterday we prepared and gave to Counsel for
16 the Charging Party and Counsel for the General Counsel
17 essentially a declaration that attaches all of those documents
18 and our notion was that there's no need to burden the record on
19 this.

20 That our suggestion is that we introduce the affidavit
21 which, again, essentially all it does is authenticate these
22 documents. And that would be sufficient from our perspective
23 in terms of litigating this issue in support of our contention
24 that there was in fact a binding agreement in place. So that
25 was our suggestion how to expeditiously reserve the record on

1 that point and, you know, we gave the documents in the
2 declaration to Mr. Rose and to Mr. McGovern yesterday and
3 that's where the matter stands. You know, we await their
4 position on whether we can dispose of this issue by simply
5 admitting that document.

6 JUDGE ROSAS: So this document you gave to them and
7 you're going to offer that?

8 MR. MARGOLIS: Yeah, I gave it to them as a proposed
9 exhibit.

10 JUDGE ROSAS: Let me see it. Let's mark it for
11 identification and let's deal with it.

12 MR. MARGOLIS: Your Honor, shall we have the reporter
13 mark copies for identification.

14 JUDGE ROSAS: Yes.

15 MR. MARGOLIS: Okay. I'm going to ask the reporter to
16 mark as Respondent's Exhibit 20 for identification a
17 declaration of Kevin M. Smith dated April 12, 2016 with a
18 number of exhibits attached to it.

19 (Respondent's R-20 identified)

20 JUDGE ROSAS: General Counsel and Charging Party have
21 had an opportunity to review the document?

22 MR. ROSE: Yes, Your Honor.

23 MR. MCGOVERN: Yes, Your Honor.

24 JUDGE ROSAS: It's approximately two inches thick and
25 what say you?

1 MR. ROSE: Well, the first thing, Your Honor is there's
2 no -- there's nothing more clear than Judge Fish stating I
3 conclude that General Counsel has fallen short of meeting its
4 burden of proof that the parties reached a meeting of the minds
5 on all terms of a successor agreement in March 2013, the date
6 of the MOA, not the date, as Mr. Margolis would have it, of
7 when the, what, incorporating document was proffered if I
8 understand it correctly. Nothing can be more clear than that.

9 Secondly, look at page 2 of Mr. Smith's declaration. If
10 you look at number six -- well, this whole -- this whole
11 section here is entitled "2013 Collective Bargaining
12 Negotiations." Mr. McGovern can probably back me up on this.
13 I think that was the subject of the hearing. Was it not 2013
14 collective bargaining negotiations?

15 MR. MCGOVERN: Most definitely it was the complete
16 subject of the hearing before Administrative Law Judge Fish,
17 which was held in October 2014.

18 MR. ROSE: And I see that in number six Mr. Smith
19 declares: "On various dates since May 2013 I visited Local 3's
20 publically accessible website, which states ratification."

21 And May 2013 Judge Fish -- let's see. The hearing was
22 held October 6, 2014. That's when the hearing closed.
23 Certainly this seems to be evidence that perhaps it wasn't
24 actually, Mr. McGovern, in evidence or at least could have
25 been. I think they made an argument on ratification, if I'm

1 not mistaken.

2 MR. MCGOVERN: Correct.

3 MR. ROSE: Okay. So this is a re-litigation of a
4 decided issue. I could go on, but General Counsel for the
5 reasons stated above and for reasons I stated earlier and the
6 reasons I just stated, I object to the introduction of this as
7 evidence, Your Honor.

8 MR. MARGOLIS: If Your Honor --

9 MR. MCGOVERN: If I may heard?

10 JUDGE ROSAS: Let him talk first.

11 MR. MCGOVERN: As I got in briefly at the beginning,
12 both the hearing on Monday, I'll get into a little more detail.
13 This seems to be Time Warner's fourth bite at the apple to
14 argue that there's a contract.

15 The first bite was during the hearing with Judge Fish.
16 Judge Fish ruled and the Board affirmed that there was no
17 meeting of the minds, no contract. That's at page 18 of the
18 Board's decision recorded at 363 NLRB 30.

19 Bite number two before the Board they made a motion to
20 reopen the record dated June 8, 2015 filed along with their
21 exceptions to Judge Fish's decision. On page 2 it said "The
22 post-hearing evidence," which they sought to introduce,
23 "establishes that both parties are in agreement that a contract
24 was in effect. Thus the evidence is supportive of the
25 allegation in the complaint that the parties intended that the

1 terms of the MOA, that's what was signed in March of 2013,
2 constituted a binding agreement between them. And then an
3 attachment is a bunch of excerpts from Union's notice of intent
4 to arbitrate, which were filed after the hearing with Judge
5 Fish. That was the post-hearing evidence, because if you're
6 going to make a motion to reopen the record, you certainly
7 can't try to put stuff in that you could have put in and you
8 didn't. You try to put stuff in that happened after the
9 hearing because hey, you put it in.

10 Well, Footnote 1 of the Board's decision, the Board
11 rejected that. The Charging Party moves to reopen the record
12 to admit evidence that after the hearing Respondent filed
13 notice of its intent to arbitrate and "admitted the existence
14 of a collective bargaining agreement and arbitral and judicial
15 filings." The Charging Party, Time Warner, contends that this
16 evidence demonstrates that the respondent unlawfully refused to
17 execute an agreed upon contract. The Board says "Contrary to
18 Charging Party Time Warner's contention, the Respondent Local
19 3's post-hearing conduct shows only that Respondent Local 3
20 mistakenly believed that the parties had reached agreement on
21 March 28, 2013." That's the date the MOA was signed. "It does
22 not bear on the relevant question of whether the parties
23 reached a meeting of the minds regarding all material terms of
24 their successor agreement." And therefore, denied the motion
25 Bite number three in Federal Court before Judge

1 Weinstein when they moved to -- for summary judgment to confirm
2 the final arbitration award, the arbitrator had ruled that the
3 Union violated the no-strike clause in the contract. He took
4 the position, well, there was no contract pursuant to the
5 Board's decision.

6 The NLRB intervened in that case on the side of Local 3
7 arguing to Judge Weinstein that its decision meant there's no
8 contract. Judge Weinstein went along with that. Judge
9 Weinstein ruled that giving full effect to the Board's decision
10 meaning that there's no contract, he went on to find that there
11 was some separate agreement to arbitrate the dispute. Judge
12 Weinstein deferred to the Board's decision as presented by the
13 Board further intervened in Federal Court and Judge Weinstein
14 accepted the Board's position that its decision meant there's
15 no contract. And I can't object more strongly to any attempt
16 to re-litigate that case.

17 The whole concept that, well, we didn't agree on the
18 rider so everything else is in play is contrary to Board Law.
19 Respondents never cited any cases in support of its wacky
20 position. You can't be half pregnant. Either you have a
21 contract or you don't have a contract.

22 The Board held there is no contract and it would be
23 highly improper for Your Honor to entertain any sort of
24 evidence or make any sort of rulings on a case that's already
25 been decided by the Board which, as the Board pointed out in

1 its motion to intervene, Time Warner has never even appealed to
2 the Circuit Court. If they want to take up the Board's
3 decision, that's the proper venue for them to do it. Not to
4 have that fourth bite at the apple right here and right now.
5 Thank you.

6 JUDGE ROSAS: Okay.

7 MR. MARGOLIS: Your Honor, first of all, Mr. McGovern
8 has so egregiously misstated the prior proceedings that I don't
9 know where to begin.

10 First of all, the fact that certain evidence that bears
11 on the issue before you, that is whether there was a no-strike
12 obligation in effect, was also advanced, adduced in the prior
13 case involving an alleged Heinz violation really doesn't make
14 any difference. There's nothing exceptional about the fact
15 that there are documents in evidence that might be relevant in
16 that case that are also relevant to the issue before you.

17 Number two, no issue is before the Board in terms of
18 whether there was a collective bargaining agreement and there
19 is overwhelming authority, including from the Second Circuit,
20 that says that in circumstances identical to these there is a
21 binding collective bargaining agreement in place.

22 And all Judge Weinstein decided in confirming the
23 arbitration award was that the parties had signed on the first
24 day of arbitration an agreement submitting the issue to the
25 arbitrator.

1 JUDGE ROSAS: I'm going to cut you off there. Okay.
2 Let me just ask the General Counsel and/or Charging Party. If
3 I receive these documents and I'm inclined to receive them
4 pursuant to Federal Rule of Evidence 1006, essentially in the
5 nature of summaries, abstracts of voluminous documents in order
6 to facilitate the record, you refer to -- and I would receive
7 them as procedural background relevant to the Respondent's
8 defense. What I would be concerned about, as you all suggest,
9 is re-litigating, opening avenues, collateral issues. Is there
10 any danger of that in this case as you see it?

11 MR. ROSE: I don't -- well --

12 JUDGE ROSAS: Additional testimony.

13 MR. ROSE: Oh, additional testimony. I mean, we would
14 consider actually requesting a postponement for a special
15 appeal to --

16 JUDGE ROSAS: You can -- you can -- you can appeal my
17 decision depending on --

18 MR. ROSE: Well, that's how strongly we believe it. I
19 mean any fresh testimony we completely would object.

20 JUDGE ROSAS: It's all within -- it's all within the
21 General Counsel's wheelhouse and universe of law that they
22 created in terms of a lot of irrelevant testimony and evidence
23 that comes in on many cases in order to provide relevant
24 procedural background on cases that fall within -- fall within
25 the timely filing doctrine and you have history between parties

1 going back three, four years. I'm not concerned about that.

2 You can do whatever you need to do once we close the record.

3 I'm asking you where is the concern here over re-
4 litigation above and beyond my receipt of this document?

5 MR. ROSE: Well, to the extent that -- well, I'm --

6 JUDGE ROSAS: Let me put it this way. Let me interrupt
7 you again.

8 MR. ROSE: Right. If I'm --

9 JUDGE ROSAS: Let me interrupt you. Is there any
10 document in here -- in order for me to receive exhibits under
11 1006 I need to be ensured that the parties have had an
12 opportunity to review or had possession of the underlying
13 documents. In this case, the documents that are in here.

14 MR. ROSE: Yes, Your Honor.

15 JUDGE ROSAS: Any doubt, any question?

16 MR. ROSE: No, there's no doubt on that.

17 JUDGE ROSAS: Okay. All right. Okay. All right.

18 Anything else you want to say separate and apart from what
19 you've already said for the record?

20 MR. ROSE: Well, yeah, I mean to the extent, you know --
21 yes, we -- the documents we have and yes, they are summaries of
22 voluminous documents, of course, but substantively -- I guess I
23 have nothing to add beyond the fact that as evidence,
24 substantive evidence, this is irrelevant and an effort to re-
25 litigate.

1 JUDGE ROSAS: Well, that's a general statement whether
2 something is being re-litigated or not. Aside from the
3 incorporation of these documents into the record, I've received
4 testimony by the General Counsel. Respondent is going to put
5 on -- they've put on witnesses already. You have how many
6 witnesses left?

7 MR. MARGOLIS: We have two.

8 JUDGE ROSAS: Okay. One of them, I assume, is your
9 subpoenaed witness?

10 MR. MARGOLIS: Correct.

11 JUDGE ROSAS: Okay. And one is another one probably a
12 witness whose been already called by the General Counsel?

13 MR. MARGOLIS: Correct.

14 JUDGE ROSAS: So the universe of evidence in this case
15 is -- has been pretty well confined for the most part to the
16 facts and circumstances of this controversy on April 2nd and
17 then some investigation afterwards and then the lawyers are
18 throwing in, you know, other documents that relate, you know,
19 summary judgment but only a portion of it. Then the other side
20 is putting in a lot more relative to what's gone on in the
21 past. I'm not concerned about that. Respondent is going to be
22 raising a legal issue that I've got to determine in my decision
23 as part of all the other components and if there's procedural
24 history that's relevant or not relevant, I will refer -- if
25 it's procedural history, I'm likely to refer to it in my

1 decision. Whether or not it ultimately bears on the issues as
2 the Respondent would like remains to be seen based on the case
3 law that you're going to provide to me.

4 There's absolutely not one iota of danger here that
5 should I be wrong that there's any prejudice to the ultimate
6 determination in this case based on the record that I -- based
7 on the testimony that I've received, based on all of the
8 exhibits that have been provided, I think we can certainly
9 arrive at a decision with respect to whether there's been a
10 violation of the Act in relation to these four individuals, so
11 I'm not concerned about where we stand right now upon receipt
12 of this document, which has been designated as what?

13 MR. MARGOLIS: Respondent's 20 for identification.

14 JUDGE ROSAS: Okay. What I will allow before I make a
15 final ruling on Respondent's 20 is -- is there any part of
16 Mr. Smith -- Mr. Smith is here. Is there any part of this
17 affidavit and the statements that are made in it by Mr. Smith
18 that might otherwise be seen as something in addition to the
19 authentication of the documents that are incorporated here that
20 you all may want to ask him some questions about?

21 MR. ROSE: May I take a moment, Your Honor?

22 JUDGE ROSAS: Sure. Off the record.

23 (Whereupon, a brief recess was taken)

24 JUDGE ROSAS: Back on the record. General Counsel.

25 MR. ROSE: Your Honor, what this document is, there are

1 certain paragraphs that just say I attached as a document. I
2 have knowledge of a document attached. It's a document. But
3 there are other paragraphs which is just basically argument
4 that one would put in --

5 JUDGE ROSAS: Tell me where.

6 MR. ROSE: For example, on page 2, paragraph 7. It's a
7 representation of facts which may or may not be true, but it's
8 a paragraph that doesn't say attached hereto is a document.
9 And if you would look, Your Honor -- so I would at the very
10 least ask paragraph 7 be stricken.

11 JUDGE ROSAS: Okay. Hold on one second.

12 MR. ROSE: Okay.

13 JUDGE ROSAS: What do you say about that?

14 MR. MARGOLIS: I would propose a stipulation that I
15 assume would be acceptable that to the extent paragraph 7
16 contains statement of facts that the parties can stipulate to
17 those facts.

18 MR. ROSE: No, because they're not relevant. I'm not
19 going to stipulate to the facts, Your Honor.

20 JUDGE ROSAS: Hold on one second. More of the same?

21 MR. ROSE: Yeah, the same objections, Your Honor. And
22 if Your Honor could look at paragraph 10 for example. "On
23 August 21, 2014 Derek Jordan was deposed in a proceeding." And
24 the last sentence of this paragraph: "A copy of certain
25 relevant excerpts from the transcript of his deposition is

1 attached as Exhibit F.” Really? You know, the proper way to
2 do this, of course, is if Mr. Jordan doesn’t remember anything,
3 he could refresh his recollection. You put something in as
4 past, you know, as a -- you know, to impeach, whatever.

5 You know, to attach hearsay and call it evidence, this
6 is just -- this is precisely why this is really inappropriate.
7 I mean, this is --

8 JUDGE ROSAS: Okay. Hold on one second. My comment
9 about that is that I suspect the Charging Party is going to
10 have a copy of the entirety of his deposition, but this is an
11 example where we fall into an enlargement or belaboring of the
12 record in order to accomplish that, so there be an objection to
13 that last sentence of 10 -- 7 is stricken, the last sentence of
14 10 is stricken.

15 MR. MCGOVERN: Meaning Exhibit F is stricken?

16 JUDGE ROSAS: The last sentence of 10 is stricken and so
17 you’re talking about the attachment as Exhibit F?

18 MR. MCGOVERN: Well, the last sentence of 10 is a copy
19 of certain excerpts are attached.

20 JUDGE ROSAS: That will be stricken as well.

21 MR. MCGOVERN: So then the exhibit is stricken, correct?

22 JUDGE ROSAS: That will be stricken as well.

23 MR. MARGOLIS: Your Honor --

24 JUDGE ROSAS: I assume the best evidence is the end
25 result of that.

1 MR. MARGOLIS: We're happy to put in the entire -- it's
2 not very lengthy -- the entire transcript. I think that
3 resolves any issue.

4 JUDGE ROSAS: Well, we'll deal with that separate.

5 MR. ROSE: See, this is the road, Your Honor, that this
6 goes down. You know, when you start putting in a declaration
7 that's basically argument with cherry picked evidence, and of
8 course, every part is allowed to cherry pick evidence --

9 JUDGE ROSAS: You gave me an example of cherry picking
10 in the context of a deposition and that's been stricken. So
11 where else do you have a problem here?

12 MR. ROSE: Okay. One moment, Your Honor.

13 JUDGE ROSAS: Okay.

14 MR. MARGOLIS: Your Honor.

15 JUDGE ROSAS: Go ahead.

16 MR. MARGOLIS: May I be heard both on those specific
17 paragraphs and more general issue, which is this: It's very
18 nice for a bunch of lawyers on the 36th floor of a Federal
19 office building to pontificate about contract, no contract,
20 riders, no riders, that's fine for lawyers to do that. But we
21 need to focus on what the issue is before you.

22 Your Honor, the issue before you is whether certain
23 employees who engaged in a "job action" in front of the
24 employer's premises on April 2, 2014 were disciplined in
25 violation of the National Labor Relations Act. We are putting

1 aside all highfalutin legalities that we're hearing here. At
2 the very least at bottom the employer is entitled to put on
3 what is overwhelming evidence that at the time in question the
4 employer and the Union both understood and they represented to
5 each other and they acted in accordance with the undeniable
6 principal that there was a collective bargaining agreement and
7 more specifically a no-strike obligation in place.

8 On April 2, 2014 or more specifically, when the
9 discipline occurred in May of 2014, there was not one shred or
10 sliver or atom of a doubt on that point. And when this
11 Employer disciplined four employees based in part on the
12 understanding, if you want to call it that, that there was a
13 no-strike obligation in effect, aside from the fact that there
14 was a blockade of its premises, but the notion that an Employer
15 can be hailed before this agency and found guilty of an unfair
16 labor practiced based on some post-hoc lawyers concoction that
17 a collective bargaining agreement that the parties lived under
18 faithfully for years suddenly disappears and renders discipline
19 that was taken in reliance on that overwhelming history and
20 that document unlawful is quite frankly absurd.

21 So at the very least, all of these documents and
22 everything in the declaration should come into the record
23 because it bears on the Employer's motive when it imposed the
24 discipline in question.

25 JUDGE ROSAS: Okay. Counsel, documents are one thing.

1 Affidavit testimony in lieu of live testimony just doesn't fly
2 unless there's a stipulation. There's nothing else I can tell
3 you. I think I -- I think we've pretty much exhausted the
4 positions of the parties on the record, so I'm going to ask you
5 to just move on with respect to the request that I've made of
6 you, which is that General Counsel and/or Charging Party point
7 out any other portions that they believe fall outside the
8 receipt -- the basis for receiving this document which was as a
9 summary or as an abstract or compilation of documents relevant
10 to the respondent's defense.

11 MR. ROSE: I just need to get one --

12 JUDGE ROSAS: Sure. Off the record.

13 (Whereupon, a brief recess was taken)

14 JUDGE ROSAS: Go ahead.

15 MR. ROSE: Well, Your Honor, paragraph 8.

16 MR. MARGOLIS: I'm sorry?

17 MR. ROSE: Paragraph 8. This paragraph talks about and
18 attaches as Exhibit B copies of examples of the notice of
19 intent to arbitrate which Local 3 served and these cases are
20 attached as Exhibit D.

21 Now, I know Your Honor, you know, is kind of -- is
22 somewhat working in a vacuum when we're talking to you about
23 documents like motion to reopen the record and you haven't seen
24 them. But I'm looking at the motion to reopen the record in
25 the prior Board case and low and behold there is as a -- in

1 their attachment A they propose to the Board to put in evidence
2 a notice of intention to arbitrate dated 12/5/2014. That's
3 back then their motion and they attach it here again.

4 So when I say they're trying to re-litigate an issue
5 which was foreclosed by Footnote 1, this is precisely what I
6 mean. They're putting in evidence from their motion to reopen
7 the record in here to show that contract existed. The Board
8 said that evidence doesn't show a contract existed in
9 Footnote 1.

10 Now, they put other notices of intent to arbitrate here
11 from before, from after, for the same purpose. For the same
12 purpose that was foreclosed by Footnote 1. That's what's going
13 on.

14 So I would move to strike that entire paragraph in the
15 exhibit.

16 JUDGE ROSAS: You're saying it's inaccurate in any part?

17 MR. ROSE: Well, no, I mean I'm not saying the
18 attachments are inaccurate, no.

19 JUDGE ROSAS: Okay. Overruled.

20 MR. ROSE: Okay. We dealt with 10 and let's see. Okay.
21 Transcript excerpts are being attached in paragraph 14.

22 JUDGE ROSAS: You're referring to paragraph 14?

23 MR. ROSE: Fourteen, yes, sir. Exhibit J.

24 JUDGE ROSAS: Same objection as with respect to I think
25 it was 10?

1 MR. ROSE: Yes, Your Honor. It's hearsay.

2 MR. MARGOLIS: Your Honor, the solution to that as with
3 the other paragraph is unfortunately at the cost of more trees
4 put in the entire transcript because we think it's unseemly at
5 best to suggest that a Union representative can go and testify
6 under oath to a particular fact and then the Agency, the
7 General Counsel, would seek to withhold from your view that
8 sworn testimony. It's beyond unseemly. It's just
9 inappropriate. Either we're here to get the facts or we're
10 not.

11 MR. ROSE: Your Honor --

12 JUDGE ROSAS: Those were excerpts from an arbitration
13 hearing which resulted in an arbitration decision, correct?

14 MR. MARGOLIS: That's correct, Your Honor.

15 JUDGE ROSAS: And you have that decision in the record
16 as relevant to your procedural background?

17 MR. MARGOLIS: Yes.

18 JUDGE ROSAS: Okay. So this is stricken. It's not the
19 best evidence.

20 MR. MARGOLIS: Isn't it the best evidence of what
21 Mr. Jordan testified to, Your Honor?

22 JUDGE ROSAS: To the extent that there's a procedural
23 background that I'm going to be asked to consider in this
24 decision, the decision of the arbitrator here is the best
25 evidence, so that last sentence of 14 is stricken.

1 MR. ROSE: So Your Honor, otherwise, I rely and I rely
2 for the other portions, I rely on my objection that to the
3 extent that this seeks to prove that there existed a contract
4 is completely irrelevant. It's a re-litigation and is
5 foreclosed by the Board's decision in 363 NLRB 30.

6 MR. MCGOVERN: And if I may, Your Honor, briefly. I
7 don't think that this is a situation where, you know, some
8 falutin esoteric issue being talked about by lawyers is really
9 what's in play here. What's in play here is the Board's
10 decision not our thoughts but what the Board said in 363 NLRB
11 30 where they rejected any attempt to put in post-hearing
12 conduct and I think that same should hold true for any pre-
13 hearing conduct or during hearing conduct, because as the Board
14 said, the Respondent's, Local 3's, post-hearing conduct shows
15 only that the Respondent mistakenly believed that the parties
16 had reached an agreement on March 28, 2013. So in answer to
17 Mr. Margolis, well, they mistakenly thought so too.

18 Every -- that's the whole point of there being no
19 meeting of the minds. We thought there was. They thought
20 there was. So there's no relevance to anything that "Oh," the
21 Union was acting as though there was a contract. Well, that's
22 precisely the evidence that the Board rejected in the motion to
23 reopen the record and that's why it shouldn't even be accepted
24 here because it's an attempt to re-litigate.

25 JUDGE ROSAS: Anything else?

1 I'm receiving Respondent's 20 as redacted with my
2 initials next to those stricken portions. Respondent's 20 over
3 objection.

4 (Respondent's R-20 received)

5 JUDGE ROSAS: Next. Respondent, right.

6 MR. MARGOLIS: Yes, so I think where we are, Your Honor,
7 is we went down the path of addressing what documents would
8 come into the record that Mr. Rose initially raised, so I think
9 we concluded this issue for now.

10 JUDGE ROSAS: Okay. Are you ready with your next
11 witness or next evidence?

12 MR. MARGOLIS: Yes.

13 JUDGE ROSAS: Okay. Let's go.

14 MR. MARGOLIS: Respondent calls Derek Jordan.

15 JUDGE ROSAS: Sir, please raise your right hand.

16 (Whereupon,

17 DEREK JORDAN

18 having been called as a witness by and on behalf of the
19 Respondent and having been first duly sworn, was examined and
20 testified on his oath, as follows:)

21 JUDGE ROSAS: Please have a seat. State and spell your
22 name and provide us with an address.

23 THE WITNESS: Okay. Good morning. My name is Derek
24 Jordan, D-E-R-E-K, J-O-R-D-A-N. And Your Honor, is there a
25 specific address?

1 JUDGE ROSAS: You can give a business address.

2 THE WITNESS: Okay.

3 JUDGE ROSAS: Anywhere where you can receive a subpoena.

4 THE WITNESS: Okay. It's going to be 158-11 Harry Van
5 Ardsale, Jr. Avenue, 4th Floor, Room 402, and it's Flushing,
6 New York and the zip code is 11365.

7 JUDGE ROSAS: I'm going to ask you to bring your voice
8 up.

9 THE WITNESS: Okay.

10 DIRECT EXAMINATION

11 BY MR. MARGOLIS:

12 Q. Good morning, Mr. Jordan.

13 A. Good morning.

14 Q. Were you provided with a copy of a subpoena requesting
15 that you bring certain documents to this hearing?

16 A. No, I was not. Other than what you gave me this morning,
17 no, I was not.

18 Q. Okay. So prior to this morning, you've never seen a copy
19 of the subpoena?

20 A. No, I have not.

21 Q. So for example, Mr. McGovern did not give you a copy of
22 the subpoena?

23 A. No, he did not.

24 MR. MARGOLIS: Your Honor, in order not to delay the
25 proceedings, we intend to proceed with the examination. But in

1 light of the discussion on the record or the discussion in this
2 hearing, it's extremely troubling that counsel for the Charging
3 Party did not see fit, in light of that discussion, to provide
4 a copy of the subpoena to his client. The subpoena that
5 there's already an affidavit of service on.

6 JUDGE ROSAS: Okay. Stop.

7 MR. MCGOVERN: If I may be heard.

8 JUDGE ROSAS: If you have a brief response to that.

9 MR. MCGOVERN: A brief response is I didn't meet with
10 Mr. Jordan until today although I did take a picture of the
11 rider and texted it to Mr. Jordan. He didn't get the subpoena
12 itself.

13 THE WITNESS: That's was -- yeah.

14 JUDGE ROSAS: All right. The bottom line -- bottom
15 line, this issue as far as perhaps your interest in seeking to
16 address or assess credibility based on whether a subpoena that
17 was served on an adult or person of suitable age and discretion
18 and followed up by U.S. Mail, that may have happened. That is
19 what you provided to me.

20 However, the fact is that I gave a direct order for
21 Mr. Jordan to be here today and he is here today, so I'm going
22 to foreclose any further questioning in that regard unless
23 there's a different approach that you want to take or there's
24 some other purpose for that line of inquiry?

25 MR. MARGOLIS: Well, Your Honor, the purpose of the line

1 of inquiry relates to the search that he made for responsive
2 documents.

3 JUDGE ROSAS: Okay. That's fine. That's fine.

4 BY MR. MARGOLIS:

5 Q. So do I now understand correctly, Mr. Jordan, that all you
6 got was a copy of a rider to a subpoena that was texted to you?

7 A. That is correct.

8 Q. Okay. And you understood that that called for the
9 production of certain documents, correct?

10 A. That's correct.

11 Q. Okay. And did you undertake a search for those documents?

12 A. Yes, I did.

13 Q. Okay. And do you have the responsive documents with you
14 today?

15 A. Everything was submitted ordinarily to my lawyer. The
16 same documents that were submitted throughout the entire
17 procedures we had before. There's nothing different.

18 MR. MARGOLIS: Mr. McGovern, could I request the
19 production of those documents that Mr. Jordan said that he gave
20 you.

21 MR. MCGOVERN: Mr. Jordan did not give me any. He's
22 referring to --

23 THE WITNESS: There's no new documents.

24 MR. MCGOVERN: -- back when you made a document demand
25 in the 301 lawsuit documents were provided.

1 THE WITNESS: There's no new documents.

2 MR. MCGOVERN: And I think John Byington of my firm was
3 handling that and documents were produced in the context of
4 that lawsuit. I wasn't involved in it.

5 MR. MARGOLIS: I'm not asking about a prior lawsuit.
6 I'm asking whether Mr. Jordan made a search for documents when
7 he received the rider that you texted to him.

8 THE WITNESS: Yes, I did and there's nothing new than
9 what was submitted before.

10 BY MR. MARGOLIS:

11 Q. So there's not a single document that you found --

12 A. No.

13 Q. -- that was within the scope of that rider?

14 A. No.

15 Q. Okay. And just so I understand correctly, other than that
16 texted rider that you got, you didn't receive a copy of the
17 subpoena relating to this hearing?

18 A. No, I did not.

19 Q. Until this morning?

20 A. That's correct. You handed it to me this morning. That's
21 correct.

22 Q. Right. You didn't get one, for example, provided to you
23 by the receptionist at Local 3?

24 A. I didn't get anything. No, I did not.

25 Q. And you didn't get a copy in U.S. Mail?

1 A. No, I did not.

2 MR. MARGOLIS: I'd like to have marked as Respondent's
3 Exhibit 21 for identification what is a letter addressed to
4 Derek Jordan dated March 31, 2016 with various attachments,
5 including an affidavit of service.

6 (Respondent's R-21 identified)

7 MR. ROSE: Your Honor, I have to object based on your
8 ruling previously that that ship has left the port. That train
9 has left the station, you know. He's here.

10 JUDGE ROSAS: Respondent's 21 for identification is
11 marked and has been provided to the witness. And this is
12 pertinent to your line of inquiry with respect to the existence
13 or non-existence of documents?

14 MR. MARGOLIS: And receipt of the subpoena, the
15 credibility arising from the alleged non-receipt of the
16 subpoena.

17 JUDGE ROSAS: I'm going to foreclose you on that. I'm
18 going to foreclose you on the question of whether or not to
19 attack his credibility as to whether he got it or not because
20 he was directed by the court yesterday to appear.

21 MR. MARGOLIS: Okay.

22 JUDGE ROSAS: And I was advised by counsel or assured by
23 counsel that he would be here. Okay.

24 MR. MARGOLIS: So may I just introduce the documents
25 without questioning the witness about them?

1 JUDGE ROSAS: You can ask him about the document -- no,
2 you can offer it because it's pertinent to the issue of whether
3 the documents exist or don't exist and that would be relevant
4 to his credibility. Overruled.

5 MR. MARGOLIS: So I've marked as Respondent's Exhibit 21
6 for identification, as I said, a letter dated March 31st to
7 Derek Jordan with various attachments, including a subpoena
8 from the National Labor Relations Board. Based on his prior
9 testimony, I believe Mr. Jordan will say he's never seen this
10 before.

11 JUDGE ROSAS: He's an adverse witness, so go ahead.

12 BY MR. MARGOLIS:

13 Q. I'm showing you what's been marked for identification as
14 Respondent's Exhibit 21, Mr. Jordan. Please take a look at
15 that.

16 A. Yes, I already did.

17 Q. Yes and have you seen that before?

18 A. You already answered the question. You said that I would
19 say that I never seen it before. And I'm saying honestly I've
20 never seen this document before.

21 Q. Let's turn to -- actually, let me ask you this: Is there
22 a receptionist at Local 3?

23 A. There's a few receptionists at Local 3.

24 Q. And do you remember who any of them are?

25 MR. MCGOVERN: Objection, Your Honor. Are we talking

1 about the documents or --

2 JUDGE ROSAS: I'm going to sustain that objection. I'm
3 going to sustain that objection. Move ahead to the documents.

4 BY MR. MARGOLIS:

5 Q. Can you provide a physical description of any of the
6 receptionists at Local 3?

7 MR. MCGOVERN: Objection.

8 MR. ROSE: Objection.

9 JUDGE ROSAS: Sustained.

10 MR. MARGOLIS: Okay. Your Honor, I'm just going to move
11 the admission of Respondent's Exhibit 21 just for the record of
12 what the subpoenaed proceedings were.

13 JUDGE ROSAS: Objections for the reasons previously
14 stated?

15 MR. MCGOVERN: Well, objection. I haven't brushed up on
16 my procedural word matter, but I always thought that subpoenas
17 aren't part of the record.

18 JUDGE ROSAS: Here it will be. Overruled. Respondent's
19 21 is received in evidence.

20 (Respondent's R-21 received)

21 BY MR. MARGOLIS:

22 Q. Mr. Jordan, I want to bring your attention back to the
23 date of April 1, 2014.

24 A. Okay.

25 Q. Did it come to your attention that certain individuals in

1 the bargaining unit Time Warner Cable were suspended on that
2 date?

3 A. From what I remember, yes.

4 Q. And in fact, you heard about those suspensions from calls
5 from members of the bargaining unit; isn't that true?

6 A. That is correct.

7 Q. And isn't it true that you heard from members of the
8 bargaining unit that they were so upset they might not go to
9 work the next day; isn't that true?

10 A. From what I remember, yes and I believe I had gotten some
11 phone calls at that time also, yes.

12 Q. And none of the individuals who called you with that to
13 tell you that gave you their names, correct?

14 A. Other than the shop steward at the time, Phil Papale, I
15 believe, and this is two years ago, Ken, I did get some phone
16 calls that were anonymous at the time from what I believe on --

17 Q. And so you -- I'm sorry. You got anonymous phone calls
18 from people saying they might not go to work?

19 A. Yes, that is correct.

20 Q. And based on those anonymous phone calls you were
21 concerned about people not going to work, weren't you?

22 A. I was concerned about that and the fact that my shop
23 steward was suspended along with the four foremen at the time.

24 Q. I didn't ask you whether you were concerned about other
25 things, Mr. Jordan. I asked you if you were concerned that

1 people might not go to work.

2 A. Ken -- Mr. Margolis, that's my answer.

3 Q. So it would be more helpful if you just answer the
4 questions that I ask. Okay.

5 A. And I did.

6 JUDGE ROSAS: All right. No interaction with the
7 witness. Just move to strike what's not responsive.

8 MR. MARGOLIS: So I would move to strike everything
9 after yes.

10 JUDGE ROSAS: Stricken.

11 BY MR. MARGOLIS:

12 Q. And in fact, you went to 59 Paidge Avenue the next day,
13 didn't you?

14 A. That is correct, yes.

15 Q. And the reason that you went to 59 Paidge Avenue was
16 because you were afraid that bargaining unit members might not
17 go to work that morning; isn't that true?

18 A. Partially true, yes.

19 Q. Well, do you remember, Mr. Jordan, a time when you were
20 called to give a deposition in the Federal Court litigation
21 between Time Warner Cable and Local 3 relating to the events of
22 April 2nd?

23 A. Yes, I remember. I don't remember all the details but
24 yes, I remember.

25 Q. And you came to my office at 950 Third Avenue; isn't that

1 correct?

2 A. That's correct.

3 Q. And you were represented by an attorney for purposes of
4 that deposition, correct?

5 A. Yes.

6 Q. And there was a stenographer there taking down the
7 testimony; isn't that true?

8 A. Yes.

9 Q. And at the beginning of the deposition you were informed
10 that your testimony was under oath, weren't you?

11 A. Yes.

12 Q. And you took the oath, didn't you?

13 A. Yes, I did.

14 Q. And you were told that your testimony had the same force
15 and effect as if it was given in a court; isn't that true?

16 A. Yes.

17 Q. And you also testified there was no reason such as drugs
18 or medications or illness that would prevent you from
19 testifying fully and accurately; isn't that true?

20 A. That is correct.

21 Q. Okay. I want to ask you if you remember being asked this
22 question and giving this answer during that deposition:

23 "Q So let's turn for a few minutes to April 2nd. Were you
24 present at Paidge Avenue on the morning of April 2nd?

25 "A Yes, I was.

1 "Q What were the circumstances that led to your being there?

2 "A The circumstances that led me to being there was pretty
3 much to keep -- to get the workers to go back to work or to go
4 to work."

5 You remember giving that testimony, Mr. Jordan?

6 A. I guess I remembered at the time now that you read it to
7 me. If that's what I said, then that's what I said.

8 Q. Okay. And so that was the reason you went to Paidge
9 Avenue; isn't that correct?

10 A. I guess that's correct.

11 Q. Okay. And you didn't on April 1st schedule a meeting the
12 next day at Paidge Avenue, did you?

13 A. When you say "schedule," with who?

14 Q. With bargaining unit members.

15 A. No, I did not.

16 Q. And in fact, you never even called for any sort of meeting
17 until after you got to Paidge Avenue; isn't that correct?

18 A. When you say "called for a meeting," again, called for a
19 meeting with who?

20 Q. With bargaining unit members.

21 A. No.

22 Q. So I'm not sure of your answer. Am I correct that you did
23 not call for a meeting with bargaining unit members?

24 A. I spoke to the shop steward the night before.

25 Q. And did you tell the shop steward that we're going to have

1 a meeting?

2 A. I don't remember.

3 Q. Okay. Well, let me see if I can refresh your
4 recollection. Okay. Tell me if you remember being asked this
5 question and giving this answer during your deposition.

6 A. Okay.

7 Q. "Q So how did you call for a meeting?

8 "A The meeting was called when I got down there."

9 Remember being asked that question and giving that answer?

10 A. Ken, it was two years ago. If that's what I said and it's
11 on the record, then I guess that's what I said.

12 Q. And you knew you were under oath at the time, correct?

13 A. Yes.

14 Q. Now, you're aware, are you not, that there are technicians
15 at 59 Paidge Avenue whose shifts begin at 7 in the morning,
16 aren't you?

17 A. At the time, I believe I was aware and I arrived at 6:30.

18 Q. Did I ask you what time you arrived, Mr. Jordan?

19 A. You may proceed, Ken.

20 JUDGE ROSAS: Let's refer to each other by our surnames.

21 BY MR. MARGOLIS:

22 Q. So I didn't ask you anything about what time you arrived,
23 did I?

24 A. No, but I pretty much know where you're going with this
25 because we had this discussion before.

1 MR. MARGOLIS: Well, Your Honor, I would request that
2 the witness be instructed simply to answer the questions that
3 are asked.

4 THE WITNESS: Your Honor, you have my promise that I
5 will from now on answer his questions.

6 JUDGE ROSAS: Let me just give you this instruction as I
7 frequently do on cross examination with witnesses, especially
8 happens all cases. Counsel is entitled to ask you the question
9 properly posed if it seeks a yes or no answer, then that's what
10 you need to give him unless you can't answer it or indicate I
11 can't answer that. Okay.

12 THE WITNESS: Okay.

13 JUDGE ROSAS: Or I don't know. If counsel leads you to
14 the point where you can give a brief narrative, then that's
15 appropriate. You may not like the way the answer [sic] is
16 posed. All these attorneys have their different roles on each
17 side of the case.

18 THE WITNESS: Okay.

19 JUDGE ROSAS: That would be the other side would have
20 the opportunity to come back and perhaps ask, because they know
21 what they're doing, obviously, and they will ask it if they
22 feel they need to in the manner that you might like to have it
23 asked, so we basically move along in the case if you answer it
24 the way he wants to have it answered. Okay.

25 THE WITNESS: Understood.

1 JUDGE ROSAS: And you don't go beyond that. You just
2 simply give him his answers. As I advised clients years ago,
3 it never shortens any proceedings or any depositions to go
4 beyond the question and give a lawyer more information than
5 he's asking. Okay.

6 THE WITNESS: Okay. Understood.

7 JUDGE ROSAS: So as counsel indicated, you have been so
8 instructed. All right.

9 THE WITNESS: Okay.

10 JUDGE ROSAS: Repeat the question.

11 MR. MARGOLIS: Yes.

12 BY MR. MARGOLIS:

13 Q. The question, Mr. Jordan, is: You were aware in April of
14 2014 that there were technicians at 59 Paidge Avenue whose
15 shifts began at 7:00 a.m.?

16 A. Yes, I was.

17 Q. And you were aware that there were technicians whose
18 shifts began at 7:30 a.m., weren't you?

19 A. Yes, I was.

20 Q. And in fact, it was -- you knew that there were a large
21 number of technicians whose shifts began at 7 and 7:30, weren't
22 you?

23 A. I wasn't aware of the number, no.

24 Q. Okay. But you knew it was a large number, didn't you?

25 A. I don't know. I don't know that it was a large number.

1 Q. Okay. Well, let me ask you if you remember being asked
2 this question and giving this answer at your deposition:

3 "Q Do you have a rough estimate of how many people start work
4 at 7 o'clock at Paidge Avenue?

5 "A No, I don't. I know it's a lot of people, but I don't
6 have any -- I don't have an idea of how many."

7 You remember giving that testimony?

8 A. I don't but --

9 MR. MCGOVERN: Your Honor, since it appears that we're
10 going to be going through the deposition transcript, if I could
11 ask if counsel will identify the page that he's reading from.

12 JUDGE ROSAS: You have that?

13 MR. MARGOLIS: Yes. Well, Your Honor, if the witness
14 adopts the testimony, I don't think there's any call for that.

15 JUDGE ROSAS: He's entitled to see what you're reading
16 from.

17 MR. MARGOLIS: So the last question and answer were at
18 page 47 of the deposition.

19 BY MR. MARGOLIS:

20 Q. So you knew back then that it was a lot of people whose
21 shifts started at 7 o'clock in the morning, didn't you?

22 A. I guess based on my testimony, yes and can --

23 Q. Well, was your testimony true or was it not, Mr. Jordan?

24 A. No, my testimony was true.

25 MR. MARGOLIS: Let's take a look at the video.

1 Your Honor, I'm going to show the witness an excerpt
2 from General Counsel's Exhibit 29 which is the security video
3 and I'm showing the portion that starts 6:23:10.

4 [Begin video playback]

5 BY MR. MARGOLIS:

6 Q. We're now at 6:23:31.

7 Okay. I'm going to stop at 6:24:06. So Mr. Jordan,
8 having reviewed that excerpt from a video, that is your car
9 that drives down Paidge Avenue at the time indicated on the
10 video; isn't it?

11 A. Yes, it is.

12 Q. And isn't it true that when you came to the closer end of
13 Paidge Avenue you first pulled your car up against the curb
14 that's on the right-hand side and then you backed it up so that
15 it was in the middle of the street; isn't that true?

16 A. Based on the video footage, yes.

17 Q. And you don't have any reason to doubt that, that that's
18 what happened, do you?

19 A. I think the video speaks for itself.

20 Q. And you don't have any reason to doubt the video, do you?

21 A. No, I do not.

22 Q. Okay. And when you parked your car in the middle of the
23 street, you parked it perpendicular to what the direction of
24 traffic on Paidge Avenue normally is; didn't you?

25 A. Well, if you're coming down the block, yes.

1 Q. So was that a yes, Mr. Jordan?

2 A. That's a yes.

3 Q. And the reason that you parked your car where you did is
4 because there were no spots, no regular parking spots adjacent
5 to where you put your car; isn't that true?

6 A. Well, I guess based on the video there might have been,
7 but at the time, I wasn't cognizant of what was really going on
8 around the area so I parked my car there.

9 Q. So let me remind you about some testimony you gave in your
10 deposition and see if it helps you. Tell me if you remember
11 being asked this question and giving this answer: Question --

12 MR. ROSE: Page number?

13 MR. MARGOLIS: Page 67.

14 BY MR. MARGOLIS:

15 "Q Is there some reason that you parked in the middle of the
16 street instead of in a parking spot?

17 "A There were no parking spots adjacent to my side where I
18 pulled up."

19 Do you remember being asked that question and giving the
20 answer?

21 A. Offhand I do not, but if it's in my testimony, then it
22 must've been what I answered at the time, yes.

23 Q. Okay. Let's take a look at another video. So from the
24 last video we saw that your car was parked at about 6:24:06,
25 correct?

1 A. Yes.

2 (Pause)

3 MR. MARGOLIS: Your Honor, can I suggest we just off the
4 record for a couple of minutes so I can get it to play
5 properly.

6 JUDGE ROSAS: Off the record.

7 (Whereupon, a brief recess was taken)

8 JUDGE ROSAS: Back on the record.

9 BY MR. MARGOLIS:

10 Q. Okay. Mr. Jordan, I would like you to take another look
11 at an excerpt from the security video. This time it's going to
12 be an excerpt that begins at 6:27:15, so that's about three
13 minutes after you had completed parking in front of Paidge
14 Avenue; isn't that true?

15 A. Just based on the time on the video footage, yes.

16 Q. Okay. So let's look at this excerpt starting at around
17 6:27:17.

18 Okay. So we just watched a video that went from about
19 6:27:17 to 6:28:08 and you would agree, would you not, that
20 during that video clip what we saw was another car came driving
21 down Paidge Avenue, passed where you were parked and then
22 pulled into a parking spot, a diagonal parking spot, along the
23 curb; isn't that true?

24 A. Yes.

25 Q. And that parking spot was, would you say, eight or ten

1 feet away from your car?

2 A. Based on what the video shows, yes.

3 Q. So when you testified in your deposition that you parked
4 in the middle of the street because there were no parking spots
5 adjacent, that was not true, was it, Mr. Jordan?

6 A. Based on the video it appears not to be.

7 Q. And you don't have any reason to doubt whether the video
8 is accurate, do you?

9 A. No, I do not.

10 Q. And aside from that spot that was right next to your
11 car -- well, first let me ask you this. You're aware, are you
12 not, that along the left side of Paidge Avenue if you're
13 facing -- if you're standing at the employee parking lot and
14 looking up Paidge Avenue, there are a series of diagonal
15 parking spots along the left side of the street; isn't that
16 true?

17 A. The side where I was facing going down the block you mean?
18 Yes.

19 Q. What I'm talking about is -- well, let's describe it this
20 way. Sometimes you can drive up Provost Avenue and make a
21 right on Paidge Avenue, correct?

22 A. Yes.

23 Q. And on the right-hand side of Paidge Avenue, if you do
24 that, there are a series of diagonal parking spaces, right?

25 A. Yes.

1 Q. Okay. And at the time you parked your car in the middle
2 of the street, you were aware, were you not, that there were
3 available spots in those diagonal parking places further up
4 Paidge Avenue, weren't you?

5 A. No, I don't remember.

6 Q. So let me ask if you remember this from page 68 of your
7 deposition: "And there was -- there were no spots anywhere on
8 the street?" Question. That's the question.

9 "Q And there were no spots anywhere on the street?

10 "A Probably further back, but my intention was to pull up to
11 just have our meeting and then leave."

12 So at the time of your deposition you said there probably
13 were spots further up the street, didn't you?

14 A. Yeah, probably, yes, at the time.

15 Q. Okay. And you chose not to park in those spots that were
16 further up the street; isn't that true?

17 A. Probably yes.

18 Q. And you chose not to park in that spot that was maybe
19 eight feet away from where you parked in the middle of the
20 street; isn't that true?

21 A. Well, I wasn't cognizant at the time of the parking spot.

22 Q. And so even though that parking spot was maybe eight feet
23 away from your car, you weren't cognizant of it --

24 A. That's correct.

25 Q. -- is that your testimony?

1 A. Yes, it is.

2 Q. And that's why you didn't park there?

3 A. That's correct.

4 Q. Okay. Now, you saw that the right-hand curb, that is the
5 curb on the side of 59 Paidge Avenue on the side of the
6 building, that was almost completely empty when you arrived,
7 wasn't it?

8 A. The opposite side of the street, yes.

9 Q. The side of the street that's on the side where the
10 building is.

11 A. Yes.

12 Q. And so you saw that that curb was almost completely empty
13 when you arrived, right?

14 A. Yes.

15 Q. And you chose not to park along that entirely empty curb,
16 didn't you?

17 A. I didn't know that parking was available on that side.

18 Q. Well, you saw that it was completely empty, didn't you?

19 A. Yes.

20 Q. And you chose not to park there anyway; isn't that true?

21 A. Yes, I did.

22 Q. And you chose to park in the middle of the street instead?

23 A. Yes.

24 Q. And you chose to park perpendicular to the direction that
25 traffic flows; isn't that true?

1 A. Yes.

2 Q. And by the way, Mr. Jordan, the reason you did that was to
3 start a blockade of the premises, isn't it?

4 A. No, it's not.

5 Q. And the reason you parked that way was to stop the flow of
6 traffic of vehicles down Paidge Avenue; isn't that true?

7 A. No, that's not true.

8 Q. Okay. Let's look at another excerpt. Okay. I'm showing
9 you an excerpt from the video starting at 6:24:55 and at the
10 time the video starts, the time this excerpt starts, there's no
11 other car in the middle of the street except for yours; isn't
12 that true?

13 A. That is correct.

14 Q. Now, at 6:25:45 another vehicle pulled out from one of the
15 diagonal parking spots on the -- along the side of the street
16 opposite the building and pulled out into the middle of the
17 street, correct?

18 A. Yes.

19 Q. And it stopped in the middle of the street perpendicular
20 to the flow of traffic, correct?

21 A. Yes.

22 Q. Kind of similar to the way you parked, right?

23 A. Yes.

24 Q. And you know that that car that did that at about 6:25:45
25 was the car of Byron Yu, correct?

1 A. I was told in Federal Court that it was. That's correct.

2 Q. And you know who Byron Yu is, don't you?

3 A. I do now.

4 Q. And you know he's a technician, correct?

5 A. Yes.

6 Q. And the reason that Mr. Yu pulled his car out into the

7 middle of the street was because you waved your arm and

8 signaled to him to do that; isn't that true?

9 A. No, I did not.

10 Q. And you saw right before the car pulled out that you are

11 seen waving your arm to the left, did you see that?

12 A. I saw something but that's not what was going on in

13 that -- at that time.

14 Q. So when you were waving your arm from left to right two

15 times immediately before Mr. Yu got in his car and pulled his

16 car out to the middle of the road, that had nothing to do with

17 you signaling --

18 A. No, it did not.

19 Q. -- him to move his car to the middle of the street?

20 A. No, it did not.

21 Q. And in fact, to this day you have no idea why he pulled

22 his car out into the middle of the street, do you?

23 A. No, I do not.

24 Q. Isn't it true, Mr. Jordan, that the reason that

25 Mr. Jordan -- I'm sorry, that Mr. Yu pulled his car out into

1 the middle of the street was because you signaled him to do
2 that?

3 A. No, it is not.

4 Q. And isn't it true that the reason you signaled Mr. Yu to
5 do that was to further your blockage of the traffic on Paidge
6 Avenue?

7 A. No, that's incorrect.

8 Q. Okay. I'm showing an excerpt from the video that starts
9 at -- I'm sorry, that's the wrong one.

10 Okay. Let's look at a portion of the video that starts at
11 about 6:30:30. At this point, when this excerpt starts there
12 are two cars in the middle of Paidge Avenue; your car and what
13 you've come to know as Mr. Yu's car; is that correct?

14 A. That's correct.

15 Q. Now, you saw that at 6:30:55 another car pulled out from
16 the left side of the street and pulled partway out into the
17 flow of traffic and stopped; did you see that?

18 A. Based on the video, yes, I did.

19 Q. Okay. And you have no reason to doubt what's on the
20 video, do you?

21 A. No, I do not.

22 Q. And do you know whose car that is, Mr. Jordan?

23 A. No, I do not.

24 Q. And you never found out whose car it was?

25 A. No, I did not.

1 Q. And you never told that person to move their car out of
2 the flow of traffic, did you?

3 A. I didn't tell them to pull it in and I didn't tell them to
4 pull it out. No, I didn't.

5 Q. And you never told Mr. Yu to pull his car out of the flow
6 of traffic, did you?

7 A. No, I did not.

8 Q. Let's look at one more excerpt.

9 I'm showing you an excerpt from a video that starts at
10 6:31:35 and just after it starts you see a white pickup truck
11 come driving down Paidge Avenue, correct?

12 A. Yes.

13 Q. And that white pickup truck stops next to you, correct?

14 A. I don't know.

15 Q. You're one of the three people who walk over to that white
16 pickup truck, aren't you?

17 A. Okay. I guess. I don't remember that.

18 Q. And it looks like some of those people had a conversation
19 with the driver of the white pickup truck, correct?

20 A. I don't know.

21 Q. That's what it looks like on the video, doesn't it?

22 A. I'm not sure what the video is showing. I don't know. It
23 just showed people walking over to it but there's no --

24 Q. And immediately after those three people walk over to that
25 white pickup truck, the white pickup truck backs up along the

1 curb and parks in front of one of the driveways into 59 Paidge
2 Avenue; isn't that correct?

3 A. I don't know if it was backing up into a driveway. That I
4 do not know.

5 Q. Let's look at this excerpt again, Mr. Jordan. So first of
6 all, let's watch the people come over to the white pickup
7 truck.

8 And you don't know if you're one of those three people; is
9 that your testimony?

10 A. I don't remember.

11 Q. Okay. Do you know who was driving that white pickup
12 truck, Mr. Jordan?

13 A. No, I do not.

14 Q. So do you now agree that the white pickup truck backs up
15 along the curb and parks in front of a driveway into 59 Paidge
16 Avenue?

17 A. I don't know if that's a driveway or not. I know -- I see
18 the truck backing up, but I'm not aware that that's a driveway.

19 Q. Okay. And the reason you told the driver of that white
20 pickup truck to back his truck up and park in front of a
21 driveway was to prevent vehicles from entering or exiting the
22 facility by that driveway; isn't that true?

23 A. No, I didn't tell anyone to back up anywhere.

24 Q. Now, over the course of that morning there were a number
25 of vehicles that ended up parked in the street; isn't that

1 true?

2 A. Based on the video footage that I've seen, yes.

3 Q. But you have no memory of that happening; is that your
4 testimony?

5 A. I didn't say that. I said based on the video.

6 Q. Okay. So let's ignore the video for the moment, okay, and
7 just talk about your memory. Isn't it true that a number of
8 cars ended up parked in the middle of Paidge Avenue?

9 A. Yes.

10 Q. Okay. And you never learned the identity of the drivers
11 of any of those cars; isn't that true?

12 A. Other than Byron Yu, no.

13 Q. And you didn't know the identity of the drivers of any of
14 those cars even though hundreds of technicians by name; isn't
15 that true?

16 A. Yes.

17 Q. Now, is it your contention that you never blocked the
18 street that day because cars could have gotten around your car?

19 A. That is correct.

20 Q. So you never blocked the street between 6:23 when you
21 arrived and 8 a.m. that morning; is that true?

22 A. No, I did not.

23 Q. Okay. And in fact, your testimony is that cars were able
24 to get around your car that entire time?

25 A. That is correct.

1 Q. And as far as you're concerned, you didn't tell anyone to
2 block anything; isn't that true that true?

3 A. I didn't tell anyone to block anything.

4 Q. And you didn't signal anyone to block anything?

5 A. No, I did not.

6 Q. And you had nothing to do with the street getting blocked
7 off, did you?

8 A. No, I did not.

9 Q. And you never anticipated that moving your car into the
10 middle of the street perpendicular to the flow of traffic might
11 encourage others to do the same thing?

12 A. No, I did not.

13 Q. But by the same token, you certainly never told anyone who
14 had parked in the middle of the street to move their car out of
15 the middle of the street, did you?

16 A. No, I did not.

17 Q. Okay. I'm going to show you an excerpt from the video
18 starting at 6:59:30.

19 Okay. When you looked at that excerpt starting at
20 6:59:30, would you agree, Mr. Jordan, that at that point, would
21 it be fair to say that traffic was completely blocked on Paidge
22 Avenue all the way to the intersection of Provost Street?

23 A. Yes, it appears to be that way.

24 Q. And your testimony is you had nothing to do with that
25 happening; is that correct?

1 A. Well, I wouldn't exactly say that because we were out in
2 the street.

3 Q. And did you think that by parking your car in the middle
4 of the street perpendicular to traffic that would encourage the
5 employees to go to work?

6 A. No.

7 Q. And did you think that parking your car perpendicular to
8 traffic on Paidge Avenue would assist the employees in getting
9 into the facility?

10 A. Would assist them? No.

11 Q. In fact, you were fully aware that by parking your car in
12 the middle of the street and causing the traffic to back up all
13 the way to Provost Street and beyond that you were preventing
14 people from driving into the garage and into the employee
15 parking lot, weren't you?

16 A. No, if you look at the position where my car is versus the
17 others, I wouldn't say my car is blocking anything.

18 Q. Now, it's your contention that the demonstration that
19 occurred on Paidge Avenue on April 2, 2014 didn't prevent
20 anyone from going to work, did it?

21 A. No, it did not.

22 Q. Okay. But as you sit here today, you can't tell us how an
23 employee could have driven out of the 59 Paidge Street garage
24 to make a service call during this demonstration, can you?

25 A. Yes, I can.

1 Q. Well, let me remind you about what you said on page 87 of
2 your deposition:

3 "Q Well, what if someone was in the garage and had to go and
4 make a service call, how would they have done it?

5 "A I don't know."

6 That was your testimony back then, wasn't it?

7 A. At the time, yes. You asked me today.

8 Q. Right.

9 A. Today I can tell you.

10 Q. And you would agree that even today you have no idea how
11 someone could have driven out the garage exit on Paidge

12 Avenue --

13 A. Yes, I do.

14 Q. -- and made a service call; isn't that true?

15 A. Yes, I do.

16 Q. So your view of the situation has changed since you gave
17 that deposition; is that your testimony?

18 A. Well, I -- yes. I'm not going to go into details of why
19 but yes, it has.

20 Q. Now, you told us earlier, Mr. Jordan, that you were there
21 for the purpose of encouraging people to go to work, correct?

22 A. Yes.

23 Q. Because the last thing you wanted is for anyone not to get
24 to work on time; isn't that true?

25 A. Yes.

1 Q. Okay. But even though you were there for the purpose of
2 getting people to go to work, you didn't keep track of the time
3 to make sure that your gathering didn't overlap the start of
4 the shift --

5 A. That is correct.

6 Q. -- did you?

7 A. That is correct, yes.

8 Q. Now, you're aware, are you not, that the fire department
9 has a facility up the block from the Time Warner Cable
10 facility, aren't you?

11 A. Yes, I am now.

12 Q. And you became aware at some point that day that the
13 traffic had gotten so backed up that it was blocking that fire
14 department facility, didn't you?

15 A. To my recollection now we weren't blocking the entrance to
16 the firehouse.

17 Q. Okay. Let me remind you what you testified to in your
18 deposition, Mr. Jordan.

19 A. I know what I testified to.

20 Q. On page 88, tell me if you remember giving this testimony,
21 which is at page 88:

22 "Q Are you aware that some traffic during the safety meeting
23 backed up and blocked the facility?"

24 We're talking about the fire department facility.

25 "A Now I'm aware when I walk down there, yes.

1 "Q So you were aware of it?

2 "A After a while, yes."

3 A. But it wasn't -- it didn't block it.

4 Q. So your testimony that you gave in your deposition was not
5 accurate?

6 A. I made a mistake.

7 Q. And when you parked your car perpendicular to the flow of
8 traffic and engaged in these activities, you didn't have any
9 plan in mind for clearing the street in the event there was
10 some kind of emergency, did you?

11 A. No, I did not.

12 Q. And did you consider holding the meeting on the sidewalk
13 instead of the street?

14 A. No, I did not.

15 Q. And tell me if you remember being asked -- well, first of
16 all, do you remember being asked in your deposition about
17 holding the meeting on the sidewalk instead of the street?

18 A. I don't remember honestly, no.

19 Q. So tell me if you remember giving this testimony at page
20 89 of your deposition:

21 "Q Is there some reason you couldn't have held your safety
22 meeting on the sidewalk or in the employee parking lot instead
23 of on Paidge Avenue?

24 "A Well, I didn't have access to the premises. That is
25 personal property.

1 "Q What about on the sidewalk?

2 "A I don't know. The street is neutral ground. I don't know
3 about the sidewalk. I don't know about the sidewalk being
4 neutral, a neutral meeting place.

5 "Q So you never considered having a group gather on the
6 sidewalk instead of on the street?

7 "A No, I did not."

8 A. I recall that, yes.

9 Q. Okay. And that testimony was accurate, wasn't it?

10 A. Yes.

11 Q. And the reason that you held your meeting on the street
12 instead of on the sidewalk was because you wanted to block
13 access to the premises; isn't that true, Mr. Jordan?

14 A. No, that's incorrect.

15 Q. Okay. I'm going to show you another excerpt.

16 MR. MARGOLIS: Could we go off the record for a moment,
17 Your Honor.

18 JUDGE ROSAS: Off the record.

19 (Whereupon, a brief recess was taken)

20 JUDGE ROSAS: Back on the record.

21 BY MR. MARGOLIS:

22 Q. Mr. Jordan, you testified earlier that at some point when
23 you were at Paidge Avenue, you called for a meeting, correct?

24 A. Yes.

25 Q. I would like to look at a snippet of video starting at

1 about 7:33:28.

2 First of all, do you remember what time it was that you
3 did that?

4 A. No, I do not.

5 Q. Okay. At 7:34:50 the camera pans up and shows a group of
6 people surrounding some cars, correct?

7 A. Yes.

8 Q. And that's what you have referred to as your meeting,
9 correct?

10 A. That's correct.

11 MR. ROSE: Your Honor, I object to the characterization
12 by Mr. Margolis of surrounding cars. The crowd obviously is
13 not surrounding cars.

14 JUDGE ROSAS: Subject to interpretation but I agree with
15 your sense that there's no indication that they've taken cars
16 hostage.

17 MR. MARGOLIS: I was intending to suggest that.

18 JUDGE ROSAS: Right. I didn't think that either, but I
19 understand your concern, Counsel.

20 BY MR. MARGOLIS:

21 Q. So would you agree that your meeting began at about 7:30?

22 A. Based on the times on the video, yes.

23 Q. And that was your safety meeting, correct?

24 A. That is correct.

25 Q. So you got to Paidge Avenue at about 6:23 in the morning,

1 correct?

2 A. Based on the video time, yes.

3 Q. So from 6:23 in the morning until about 7:30 when your
4 meeting started, you were just blocking the street and not
5 conducting a meeting, correct?

6 A. No, we weren't blocking the street.

7 Q. Now, this so-called safety meeting that started at about
8 7:30 ended at about 8 o'clock, correct?

9 A. I'm not sure what time it ended.

10 Q. Do you have any idea what time it ended?

11 A. Based on I guess in court, it was around 8 o'clock I
12 believe.

13 Q. Well, you've seen the video, haven't you?

14 A. I haven't seen it recently. I haven't seen that video in
15 about two years. This is 2016.

16 Q. So from 6:23 in the morning until about 8 o'clock when the
17 video shows this meeting breaking up, you never told anyone "Go
18 to work now and we'll address these concerns later," did you?

19 A. No, I did not.

20 Q. And as you sit here today, you can't name a single Time
21 Warner Cable technician who was performing his or her duties
22 during the time that you were at Paidge Avenue that morning,
23 can you?

24 A. No, I cannot.

25 Q. And wouldn't you agree that any technician who worked at

1 59 Paidge Avenue and was supposed to punch in at 6:30 or 7:00
2 or 7:30 would have been delayed in being able to perform their
3 duties until your meeting ended; isn't that true?

4 A. Possibly.

5 Q. Well, tell me if you remember this testimony from page 130
6 of your deposition:

7 "Q Let's say for the people who were supposed to have punched
8 in at 6:30 or 7 o'clock, is it fair to say that during that
9 time until the meeting disbanded they were not performing their
10 duties?

11 "A You can say they were delayed."

12 That's what your testimony was, wasn't it?

13 A. Well, if it's on the paper, yes.

14 Q. And in fact, during your -- the meeting portion of that
15 day, that is, starting at about 7:30 until 8 o'clock, there's
16 no way that any technician could have driven down Paidge Avenue
17 and gotten into the employee parking lot through the entrance
18 to the employee parking lot, correct?

19 A. That is correct.

20 Q. Okay. And during that period of time, there's no way any
21 manager or supervisor could have driven down Paidge Avenue and
22 driven into the employee parking lot, correct?

23 A. Not on Paidge Avenue, but there was other means, yes.

24 Q. And isn't it true that there's no way during at least the
25 portion of your meeting that no one could have made any

1 deliveries to the facility through the main pedestrian
2 entrance; isn't that true?

3 A. The main pedestrian entrance being where?

4 Q. Well, aren't you familiar where the --

5 A. You mean where the employees come in and out? That
6 entrance that's all the way down Paidge Avenue? Because
7 there's several entrances.

8 Q. Yes, I'm talking about the one all the way down --

9 A. The one all the way down. That's correct.

10 Q. -- close to the employee parking lot.

11 A. That's correct.

12 Q. Okay. So no one could have made any deliveries to that
13 entrance while you were conducting your meeting?

14 A. Not unless they walked down the block, no.

15 Q. Okay. They certainly couldn't have driven a truck or car
16 down there, correct?

17 A. No.

18 Q. And are you aware that customers sometimes use that
19 entrance we just talked about; the one next to the employee
20 parking lot?

21 A. No, I don't believe so.

22 Q. But you certainly know that no customer could have driven
23 down Paidge Avenue and gone in that entrance during the time of
24 your meeting; isn't that true?

25 A. I wasn't aware customers used that entrance.

1 Q. Okay. Well, you certainly know that no customer could
2 have driven down during that meeting and gone in the main
3 entrance, could they?

4 A. Yes.

5 [End of video playback]

6 MR. MARGOLIS: Could I have just a moment, Your Honor.

7 JUDGE ROSAS: Yes.

8 MR. MARGOLIS: Could we just step out for a couple of
9 minutes.

10 JUDGE ROSAS: Off the record.

11 (Whereupon, a brief recess was taken)

12 JUDGE ROSAS: On the record.

13 MR. MARGOLIS: No further questions, Your Honor.

14 JUDGE ROSAS: Okay. Any cross examination?

15 MR. ROSE: Not very much but can we have five minutes,
16 Your Honor?

17 JUDGE ROSAS: Sure. Off the record.

18 (Whereupon, a brief recess was taken)

19 JUDGE ROSAS: Back on. Cross examination.

20 CROSS EXAMINATION

21 BY MR. ROSE:

22 Q. Good afternoon, Mr. Jordan.

23 A. Good afternoon.

24 Q. During the April 2nd period of time that you were
25 testifying to was anything being distributed to people?

1 A. Yes, there was.

2 Q. What?

3 A. Weingarten rights and work safe flyers.

4 Q. Could you please look at General Counsel's --

5 MR. ROSE: May I ask the court reporter, please, to give
6 the witness General Counsel's Exhibit 30.

7 THE WITNESS: Yes.

8 BY MR. ROSE:

9 Q. Do you recognize that document?

10 A. Yes, I do.

11 Q. What is it, please?

12 A. This is Weingarten Rights which explains basically the
13 rights to members regarding disciplinary actions that they're
14 entitled to have, you know, a shop steward present and Union
15 representation.

16 Q. Is that the document that you referenced a few moments ago
17 as being passed out on April 2nd?

18 A. Yes, this is one of them, yes.

19 MR. ROSE: Your Honor, this GC-30 hasn't been yet
20 offered into evidence because prior witnesses couldn't identify
21 it. However, I am now offering it into evidence.

22 JUDGE ROSAS: Any objection?

23 MR. MCGOVERN: No objection.

24 MR. MARGOLIS: Could I have just a moment, Your Honor.

25 JUDGE ROSAS: Sure.

1 MR. MARGOLIS: What was the exhibit number?

2 MR. ROSE: Thirty.

3 (Pause)

4 MR. MARGOLIS: No objection.

5 JUDGE ROSAS: General Counsel's 30 is received.

6 (General Counsel's GC-30 received)

7 MR. ROSE: I have no further questions, Your Honor.

8 JUDGE ROSAS: Charging Party.

9 MR. MCGOVERN: Just a few, Your Honor.

10 CROSS EXAMINATION

11 BY MR. MCGOVERN:

12 Q. Mr. Jordan, you testified on direct examination when
13 Mr. Margolis was asking you questions that you had other
14 concerns besides employees not going to work which brought you
15 to Paidge Avenue on April 2nd. Do you recall that?

16 A. Yes.

17 Q. Could you state what other concerns you had?

18 A. Yes, the fact that they had suspended the shop steward and
19 there was no representation there and the fact that they had
20 suspended the four foremen which the technicians reported to,
21 so that led up to the safety concerns of the employees of the
22 company.

23 Q. And just so the proverbial record is complete, the name of
24 the shop steward is?

25 A. The shop steward was Phil Papale.

1 Q. And the four foremen that got suspended?

2 A. Okay. The four foremen were Leslie Wood, Kenny Lovitjean
3 (phonetic), Ralf Andersen and Frank Tsavaris.

4 Q. Now, you also testified on direct examination that the
5 fire department facility up the block -- up the street wasn't
6 blocked?

7 A. Yes.

8 Q. And how do you know that?

9 A. Well, at the time when we went down the block, we were
10 notified that the police were there and like I said, there was
11 so much confusion that day, but when there's two -- there were
12 two exits and we passed both of the exits and that's where the
13 police were sitting at the time passed the last exit, so the --
14 the -- actually, the fire department exit was not blocked at
15 the time.

16 Q. And you were physically down the street?

17 A. Down the street, yes.

18 Q. And did you talk to the police officers?

19 A. Well, I didn't personally talk with them. The other
20 business rep I was with did.

21 Q. Were you standing there?

22 A. Yes, I was.

23 Q. Did you hear the conversation?

24 A. I heard the conversation, yes.

25 MR. MARGOLIS: Objection.

1 JUDGE ROSAS: Well, he heard the conversation. That's
2 all we have. Overruled.

3 BY MR. MCGOVERN:

4 Q. And you said the policemen were sitting; were they sitting
5 in a car?

6 A. Yes, they were sitting in a police car.

7 Q. And did they exit the vehicle?

8 A. No, they did not.

9 Q. And did you recall who said what to who?

10 MR. MARGOLIS: I'm going to object at this point.

11 JUDGE ROSAS: Hold on. Did you recall?

12 THE WITNESS: Yes.

13 JUDGE ROSAS: Next question.

14 BY MR. MCGOVERN:

15 Q. And do you recall who spoke first?

16 A. Yes, I do.

17 Q. And who was that?

18 A. That was the business rep I was with.

19 Q. And what did he -- what did you hear him say?

20 MR. MARGOLIS: Objection.

21 JUDGE ROSAS: Sustained.

22 THE WITNESS: He explained --

23 JUDGE ROSAS: There's no question.

24 BY MR. MCGOVERN:

25 Q. How long did that conversation last?

1 A. It wasn't even two minutes.

2 Q. And what was the name of the business representative?

3 A. It was Sean Fitzpatrick.

4 Q. And what happened after the two minute conversation with
5 the police?

6 A. We went back and continued handing out flyers.

7 Q. Did the police direct you to leave?

8 A. No, they did not.

9 MR. MARGOLIS: Objection.

10 JUDGE ROSAS: Did the police direct him to leave. I'm
11 going to permit that. Overruled.

12 THE WITNESS: No, they did not, Your Honor. No, they
13 did not.

14 MR. MCGOVERN: No further questions.

15 JUDGE ROSAS: Any follow-up?

16 MR. MARGOLIS: If I could have just a moment, Your
17 Honor.

18 (Pause)

19 MR. MARGOLIS: No further questions, Your Honor.

20 JUDGE ROSAS: Thank you, sir. You're excused.

21 MR. ROSE: Your Honor, may I ask a question?

22 JUDGE ROSAS: In follow-up to that?

23 MR. ROSE: Yes.

24 JUDGE ROSAS: Okay.

25 RECROSS EXAMINATION

1 BY MR. ROSE:

2 Q. Mr. Margolis asked you if the police directed you to
3 leave.

4 A. Yes.

5 Q. Did they direct you to -- the policemen or police officer
6 direct you to leave Paidge Avenue completely?

7 A. No, they did not.

8 MR. MARGOLIS: Objection.

9 JUDGE ROSAS: Sustained.

10 MR. ROSE: No further questions, Your Honor.

11 JUDGE ROSAS: Okay. You're excused. Thank you.

12 (Witness is excused)

13 JUDGE ROSAS: Are you ready with your next witness?

14 MR. MARGOLIS: Yes. Could we take a lunch break, Your
15 Honor.

16 JUDGE ROSAS: How long is your next witness?

17 MR. MARGOLIS: I'm not going to say extremely lengthy
18 but not -- you know, the direct is probably at least a half-
19 hour.

20 JUDGE ROSAS: Okay. We'll resume at 1:30.

21 (Whereupon, a lunch recess was taken)

22 (Whereupon, at 12:47 p.m. a luncheon recess was taken to
23 reconvene at 1:30 p.m.)

24

1 our security team to have them pull all relevant video of the
2 event. We also then reached out to our payroll group to
3 acquire the payroll records to determine who was scheduled to
4 work that day. We then convened several times a group of
5 leaders, who work out of the Paidge Avenue location, to
6 identify the participants in the video and then we cross
7 referenced those who we were able to identify in the video to
8 determine -- with the payroll records to determine if they were
9 scheduled to work or not.

10 Q. Does the company use a time keeping system?

11 A. Yes.

12 Q. What's it called?

13 A. Kronos.

14 Q. Can you turn over the --

15 MR. MARGOLIS: can you take a look at Respondent's
16 Exhibit 22 for identification.

17 (Respondent's R-22 identified)

18 BY MR. MARGOLIS:

19 Q. And first just tell us generally what these documents are?

20 A. This is the actual punch in and out Kronos record for the
21 employees who names -- whose name appears at the top of each
22 page for the pay week of March 28th through April 3, 2014 and
23 then at the bottom of the page it also indicates their assigned
24 work schedule.

25 Q. And is the punch times and the schedule, do those both

1 appear in Kronos?

2 A. Yes.

3 Q. And what -- so do I understand at the bottom where it says
4 "Schedule," that shows the regular days they're scheduled to
5 work?

6 A. Yes.

7 Q. And at the top it shows the punch times?

8 A. Correct.

9 Q. And what universe of employees does this constitute Kronos
10 records for?

11 A. This would be the group of employees who were scheduled to
12 work that week out of the Paidge Avenue location.

13 Q. Okay. And is it the people scheduled to work on a
14 particular shift or shifts?

15 A. It will be the morning shifts.

16 MR. MARGOLIS: Your Honor, the next exhibit,
17 Respondent's Exhibit 23, is a summary prepared by our office of
18 the start time and punch-in time of all of the people who --

19 JUDGE ROSAS: It's a summary of the data in Respondent's
20 22?

21 (Respondent's R-23 identified)

22 MR. MARGOLIS: It is.

23 JUDGE ROSAS: All right. Let's deal with 22 first.

24 MR. MARGOLIS: Okay.

25 JUDGE ROSAS: You're offering it?

1 MR. MARGOLIS: So I'll move the admission of Exhibit 22.

2 MR. ROSE: No objection, Your Honor.

3 JUDGE ROSAS: How many pages is it? Do you have a
4 total?

5 MR. MARGOLIS: It's probably close to a hundred front
6 and back.

7 JUDGE ROSAS: Oh, it's front and back.

8 MR. MARGOLIS: I was going to just offer the summary,
9 but you know, if the summary is acceptable, then we can just
10 offer the summary and dispense with --

11 JUDGE ROSAS: All right. Well, let's --

12 MR. MARGOLIS: I'll represent we did it from our office.

13 JUDGE ROSAS: You're representing that 23 is a summary,
14 so you're offering that as well, so we'll deal with the two
15 issues at the same time. Let's go off the record.

16 (Whereupon, a recess was taken)

17 JUDGE ROSAS: Back on the record.

18 Okay. So there's no objection to Respondent's 22 so
19 we're going to receive that.

20 (Respondent's R-22 received)

21 JUDGE ROSAS: With respect to 23 on the representation
22 that it's a tabulation or a summary of the data that's in
23 Respondent's 22, obviously, Respondent -- Charging Party and
24 General Counsel have not had an opportunity to review it. What
25 I'm going to do is I'm going to receive it conditionally. If

1 it does not turn out to be correct, then you can make a motion
2 to strike in the brief and I will entertain that. Okay.
3 Pretty easy to figure out. I'm sure that if it's not correct,
4 you could talk to counsel and you guys could do whatever you
5 feel is appropriate. But let's receive it just in the event
6 that it might make everybody's job easier.

7 (Respondent's R-23 received)

8 MR. MARGOLIS: And just for the record, it is summary --
9 23 is a summary of 22.

10 JUDGE ROSAS: Right.

11 MR. MARGOLIS: It doesn't summarize all of the
12 information in 22. It summarizes the latenesses.

13 JUDGE ROSAS: Well, it's being received conditionally,
14 like I said, on the basis that it is a summary that will
15 enable -- it's being offered as a summary that would enable the
16 fact finder to more readily and easily determine the
17 information -- the pertinent information that's contained in
18 the time card records. All right. And it's subject to a
19 motion to strike should it be inaccurate or misleading or have
20 some other problem attendant to it that would not be
21 appropriate for fact finding.

22 MR. ROSE: Your Honor.

23 JUDGE ROSAS: Yes.

24 MR. ROSE: Could I just ask for clarification from
25 Mr. Margolis, he put it together. So this Exhibit 23 isn't

1 going to list -- it only lists people that came in list?

2 MR. MARGOLIS: Correct.

3 MR. ROSE: It doesn't list the people that came in early
4 or on time?

5 MR. MARGOLIS: That's correct.

6 JUDGE ROSAS: Let me also for the record just establish
7 are these in alphabetical order, the time cards?

8 MR. MARGOLIS: Yes, I believe so.

9 JUDGE ROSAS: So if one were to refer to them in the
10 brief and go looking for them, one would find them in
11 alphabetical order.

12 MR. ROSE: Your Honor, for cross examination, is the
13 witness familiar enough with the summary so that I could ask
14 some questions.

15 JUDGE ROSAS: I will permit you to ask her that because
16 it's before you.

17 MR. ROSE: Okay. All right.

18 MR. MARGOLIS: I mean the fact is, as I said, it was
19 prepared in our office just going through those.

20 JUDGE ROSAS: Well, I'll give him a little leeway if he
21 wants to ask about 23.

22 MR. ROSE: Thank you, Your Honor.

23 JUDGE ROSAS: Go ahead.

24 MR. ROSE: Oh, not in terms of voir dire just in terms
25 of when I cross examine.

1 JUDGE ROSAS: Okay. That's fine. So I'm receiving 23
2 conditionally.

3 BY MR. MARGOLIS:

4 Q. Ms. Ciliberti, after the conclusions of the investigation,
5 did you participate in deliberation over what should be done?

6 A. Yes.

7 Q. And as a result of the investigation, were any employees
8 disciplined?

9 A. Yes.

10 Q. What forms of discipline were given?

11 A. Some employees were suspended for two weeks and others
12 received final written warnings.

13 Q. Do you remember approximately how many got final written
14 warnings?

15 A. Over 30.

16 Q. And how many people were suspended?

17 A. Seven.

18 Q. And does that seven include Mr. Andersen, Mr. Ali,
19 Mr. Tsavaris and Ms. Cabrera?

20 A. Yes.

21 Q. Does Local 3 or did Local 3 in April of 2014 have shop
22 stewards at the Paidge Avenue facility?

23 A. Yes.

24 Q. How many?

25 A. Two.

1 Q. And were either of those two stewards among the seven who
2 you testified were suspended as a result of the events on
3 April 2nd?

4 A. No.

5 Q. Can you explain why some employees received suspensions
6 and some received final written warnings?

7 A. Those that received final written warnings were scheduled
8 to work that day and did report to work. Those that received
9 suspensions were -- had no valid business reason to be at our
10 offices that day. They were not scheduled to work.

11 Q. And why did you draw that distinction? That is, the
12 distinction between people who were scheduled to work and
13 people who were not scheduled to work?

14 A. Well, there was a reason for somebody to be present if
15 they were scheduled to work. There were four people who had no
16 valid business reason to be at that location at that hour of
17 the morning.

18 Q. Can you -- well, first let me ask you: Who conducted the
19 interviews of the employees?

20 A. Members of the HR Team.

21 Q. And do you remember what members of the HR Team?

22 A. It was myself, Mary Maldonado, Damian Montanez, Lawana
23 (phonetic) Baker and Arison Norman.

24 Q. And did all of those people report to you?

25 A. Yes.

1 Q. And were the people who conducted the interviews
2 instructed to take notes of the interviews?

3 A. Yes.

4 Q. And to your knowledge, did they?

5 A. Yes.

6 Q. Did you expect those notes to be accurate?

7 A. Yes.

8 Q. And was it part of their regular responsibilities to take
9 those notes?

10 A. Yes.

11 Q. Who generally was present at the interviews?

12 A. The member of the HR Team was present, a shop steward was
13 present and the business leader was present.

14 Q. Can you look at --

15 MR. MARGOLIS: Just for everyone's benefit, I think, the
16 next four exhibits are General Counsel exhibits which we don't
17 need to refer to at the moment. So we're going to turn to
18 Exhibit 24 for identification.

19 (Respondent's R-24 identified)

20 BY MR. MARGOLIS:

21 Q. Putting aside -- you have before you Exhibit 24 for
22 identification?

23 A. Yes.

24 Q. Putting aside the specifics of who it relates to and the
25 handwritten information, I want to ask you a couple of

1 questions about the form. Did you -- is this basically the
2 form, that is, the printed or typed form that was used for all
3 of the interviews?

4 A. Yes.

5 Q. And did you participate in developing the questions that
6 are on this form?

7 A. I did.

8 Q. Okay. Now, just to go back for a second, you said that
9 part of the investigation involved interviewing people who were
10 identified on the video. Why did you conduct those interviews?

11 A. It was important to us to understand why our employees
12 participated in a blockade that prevented us from servicing our
13 subscribers. We also were trying to determine if this was a
14 grass roots effort or if they were being influenced by Local 3,
15 so we were trying to determine who was at fault here.

16 Q. Okay. And is it, as a general practice, does the company
17 interview employees about potential discipline?

18 A. Yes, we regularly do.

19 Q. Now, if you take a look at Exhibit 24 and, again, for the
20 moment just focusing on the typed portion of it, let's go down
21 to about halfway down the page where there are several
22 questions in a row: How did you get to work that day? Was it
23 a company vehicle? Where did you park? What time did you
24 arrive?

25 Do you see that?

1 A. Yes.

2 Q. What was the purpose of having that question on the form
3 in relation to what you just mentioned as the purpose of doing
4 the interviews?

5 A. We were trying to understand why our employees just
6 haphazardly parked the way that they did. Why there was this
7 gathering outside of our location. What ownership they had in
8 that activity.

9 Q. And what about the question -- you see there's a
10 statement. It appears that Derek Jordan was present as well?

11 A. Yes.

12 Q. And immediately under that there's a question: "Who told
13 you about this gathering?" And what was the purpose of
14 including that question on the interview form?

15 A. Again, it was to understand was this something related to
16 employee communication or was it somebody within the Local that
17 was communicating out the need for our people to create this
18 blockade.

19 Q. And look at the next three questions about when did you
20 receive notification? How did/was this event communicated to
21 you? Again, what were you told about the reason for the
22 protest?

23 What was the purpose of including those questions with
24 reference to the goals you mentioned for conducting the
25 interviews?

1 A. In terms of notification we were trying to discern whether
2 this was a pre-planned event or if this was something that just
3 occurred that morning. How was the event communicated? Was
4 this a mass emailing that took place or was it just simply
5 through word of mouth and what were you told about the reason
6 for the protest? We have a number of mechanisms in place that
7 our employees can reach out and discuss with us issues that are
8 bothering them and so, frankly, we were surprised that they
9 used a blockade to share information rather than coming
10 directly to us through one of the other programs that we have
11 in place.

12 Q. Now turn to the next page and there at the top is the
13 question: "Have you reviewed the CBA and are you familiar with
14 the section that prohibits cessation or stoppage of work?"

15 What was the purpose of including those questions in the
16 questionnaire?

17 A. So in this case we were trying to understand if it was a
18 willful disregard of the section that prohibits stoppage of
19 work or if they were just ignorant of that section in the
20 contract.

21 Q. And why is it relevant whether it was willful or not?

22 A. Well, if it was willful, it was purposeful that they were
23 trying to interfere with our business and prevent us from
24 rolling out our trucks and keeping our commitments to our
25 subscribers.

1 Q. Okay. Now, you mentioned that you were one of the people
2 who conducted these interviews. Do you recall the names of any
3 of the people who you interviewed yourself?

4 A. I interviewed Joseph England, Leonard Glessing, Tom
5 Yandoli.

6 Q. I'm sorry?

7 A. Tom -- Thomas Yandoli. I don't recall any others.

8 Q. Okay. Did you interview Irvin Aviles?

9 A. Yes, I did.

10 Q. And if you look at Respondent's Exhibit 24, is that your
11 notes of your interview of Irvin Aviles?

12 A. Yes.

13 Q. And when you met with Mr. Aviles, did he provide you any
14 information about what he observed on Paidge Avenue?

15 Actually, without looking at the document do you remember?

16 A. No, I do not.

17 Q. Okay. Can you take a look at the document and let's see
18 if that helps you remember.

19 A. (Reviewing) So he did say that there were five to six cars
20 blocking Paidge Avenue in the middle of the block. That there
21 was police presence there. That there was a crowd of people
22 gathered. He did see Phil. Phil, in this case, it's Phil
23 Papale, the former steward, and Derek Jordan present.

24 MR. MARGOLIS: Okay. I would like to move the admission
25 of Respondent's Exhibit 24 for identification.

1 MR. ROSE: No objection, yes or no.

2 MR. MCGOVERN: No objection.

3 JUDGE ROSAS: Respondent's 24 is received.

4 (Respondent's R-24 received)

5 BY MR. MARGOLIS:

6 Q. Ms. Ciliberti, did Mr. Aviles provide any information to
7 you other than the information he provided in the interview
8 itself?

9 A. He had sent me an email after the interview.

10 MR. MARGOLIS: Can you turn over the next document,
11 Respondent's Exhibit 25 for identification.

12 (Respondent's R-25 identified)

13 BY MR. MARGOLIS:

14 Q. And can you just tell us what Exhibit 25 is?

15 A. Me?

16 Q. Yes.

17 A. Oh, I'm sorry. Okay. It's an email from Irvin Aviles to
18 me apparently thanking me for the opportunity to share his
19 story with respect to the blockade.

20 Q. And did Mr. Aviles in his email -- well, strike that.

21 MR. MARGOLIS: I'll move the admission of Respondent's
22 25.

23 MR. ROSE: Objection; hearsay, Your Honor.

24 MR. MCGOVERN: Same objection.

25 JUDGE ROSAS: You're offering it as?

1 MR. MARGOLIS: Your Honor, this document was part of the
2 investigation and it was part of what was relied upon by the
3 Employer in making its decisions and so on that basis it's
4 admissible. We obviously have ample other evidence of the
5 condition of Paidge Avenue. Most notably the security video
6 and photographs, but this document was part of what was relied
7 upon.

8 JUDGE ROSAS: Does the General Counsel desire voir dire
9 before I make a ruling?

10 MR. ROSE: No, Your Honor.

11 JUDGE ROSAS: Okay. I have a couple of questions.

12 Did you ask Mr. Aviles to send you this email?

13 THE WITNESS: No, sir.

14 JUDGE ROSAS: Okay. What were the circumstances leading
15 to him following up with this email?

16 THE WITNESS: He chose to send it to me. He works on a
17 Saturday and just decided to send me an email trying to explain
18 his actions and participation in the blockade.

19 JUDGE ROSAS: Okay. So you did not ask him to send this
20 email in the course of the investigation?

21 THE WITNESS: I did not.

22 JUDGE ROSAS: This was voluntarily sent to him -- sent
23 to you by him?

24 THE WITNESS: Correct.

25 JUDGE ROSAS: All right. This is a close one.

1 Documents that are generated and received in the ordinary
2 course of business when it's the customary business of an
3 entity to generate the documents are considered business
4 records as for purposes of being an exception to the hearsay
5 rule. However, there's an element that I'll leave you all to
6 consider under the Federal Rules for briefing purposes that
7 applies a new criteria of lay which relates to the
8 circumstances relating to trustworthiness.

9 This is a matter that would be addressed as far as
10 weight is concerned, reliability of it in the context of a
11 business record generated pursuant to the investigation. It
12 is, as the witness testifies, an email containing certain
13 assertions and the weight to be given to this document is to be
14 determined, but as I indicated to the General Counsel and
15 Charging Party, it's subject to voir dire and cross examination
16 by you and possibly rebuttal or context should you seek to
17 offer it, but it was received as part of the investigation.

18 So the general rule is to err on the side of receiving
19 it as opposed to somehow making -- looking into a crystal ball
20 and being able to somehow elicit that it was absolutely not
21 possibly related to the investigation and in that context
22 generated as a business record exception to the hearsay rule,
23 so I'm going to overrule the objection with that explanation.
24 Respondent's 25 is received.

25 (Respondent's R-25 received)

1 BY MR. MARGOLIS:

2 Q. Ms. Ciliberti, you indicated that one of the people you
3 interviewed in the course of the investigation was a
4 Mr. Glessing?

5 A. Yes.

6 Q. Is that Leonard Glessing?

7 A. Yes.

8 Q. Without looking at any documents, do you remember whether
9 Mr. Glessing told you anything in the interview about what he
10 observed about the condition of Paidge Avenue?

11 A. No.

12 MR. MARGOLIS: Can you take a look at the next document,
13 which is Respondent's Exhibit 26 for identification.

14 (Respondent's R-26 identified)

15 BY MR. MARGOLIS:

16 Q. And first just tell us what that is.

17 A. These are my interview notes from the conversation with
18 Leonard Glessing.

19 Q. And if you could just read it over to yourself.

20 A. (Reviewing) Okay.

21 Q. And having read that over without reading the document
22 again, does that refresh your recollection about whether

23 Mr. Glessing told you anything about the conditions he found on
24 Paidge Avenue?

25 A. Yes.

1 Q. And what did he tell you?

2 A. He had to park by the highway because the area around
3 Paidge Avenue he described would be a mess. There was police
4 presence and there was no place to park.

5 Q. Can you now take a look again at Respondent's Exhibit 26
6 and just for the benefit of the record, the reader of the
7 record, can you just point to where it is that there's a
8 reference to him talking to you about that?

9 A. It says where did you park and I wrote about that "Parked
10 by highway." And then below that it reads "Could not get into
11 parking lot. Police cars and people all over. A mess."

12 MR. MARGOLIS: I move the admission of Respondent's 26.

13 MR. ROSE: Your Honor, I hope it's not for the truth of
14 the matter asserted. Otherwise, I would object. Is it for the
15 truth of the matter asserted?

16 JUDGE ROSAS: The truth of which matter?

17 MR. ROSE: That there were cars and, you know, police
18 presence or whatever she said as describing. This can't be
19 offered for the truth of what actually happened on April 2nd.
20 That's what I'm saying.

21 JUDGE ROSAS: Okay.

22 MR. MARGOLIS: May I be heard, Your Honor?

23 JUDGE ROSAS: Go ahead.

24 MR. MARGOLIS: Of course, it's offered for the truth.
25 This is a classic business record, was gathered in the course

1 of an investigation for the routine ordinary course of business
2 of the Human Resources Department and on that basis it's
3 admissible for the truth. It's a business record. And beyond
4 that, beyond that, it's information that the company relied
5 upon in reaching its conclusions about the investigation.

6 JUDGE ROSAS: All right.

7 MR. MARGOLIS: I'm sorry, I have one more point. And
8 that is, as we've seen earlier in the hearing, Your Honor, it's
9 certainly relevant or it's worth noting whether there is
10 corroborative evidence and given that in this case we have
11 rather indisputable evidence in the form of security videos.
12 That's all the more reason to admit this document.

13 JUDGE ROSAS: All right.

14 MR. ROSE: I withdraw my objection.

15 JUDGE ROSAS: Okay. Let me just point out the section I
16 was referring to is Federal Rule of Evidence 803(6)(e) and it's
17 a new provision which shifts the burden from -- to both sides
18 for determination by the judge regarding reliability and
19 trustworthiness to the opponent of the offered document to show
20 that the source of information or the method or circumstances
21 of preparation indicate a lack of trustworthiness. Okay.

22 So again, that makes the Finder of Fact especially in a
23 bench trial err on the side of receiving this document.
24 Whether or not the document is given weight and for what
25 purpose is a whole other story, but again, it will be received

1 and the circumstances can obviously be rebutted by the
2 opponent. Okay. So I'm going to receive Respondent's 26.

3 (Respondent's R-26 received)

4 MR. ROSE: Your Honor, maybe I spoke too soon. I'll
5 replace my objection on the record if you permit me. Thank
6 you.

7 JUDGE ROSAS: All right.

8 BY MR. MARGOLIS:

9 Q. Ms. Ciliberti, you indicated that one of the people who
10 you interviewed was a Mr. England. Is that Joe England?

11 A. Yes.

12 Q. And without looking at any documents, do you remember what
13 if anything Mr. England told you about the conditions on Paidge
14 Avenue on April 2nd?

15 A. No.

16 MR. MARGOLIS: Can you take a look at the next exhibit
17 which is Respondent's Exhibit 27 for identification.

18 (Respondent's R-27 identified)

19 BY MR. MARGOLIS:

20 Q. And can you just read that over to yourself, please.

21 A. (Reviewing)

22 Q. Have you read the document?

23 A. Yes.

24 Q. And having read that, does that help you remember what if
25 anything Mr. England told you about the conditions on Paidge

1 Avenue on April 2nd?

2 A. Yes.

3 Q. And what did he tell you?

4 A. So he said there was more than the usual number of
5 employees gathered outside of the building and cars were parked
6 at an angle down the street.

7 Q. By the way, did you tell us what Exhibit 27 is?

8 A. Twenty-seven are my notes from the conversation with Joe
9 England.

10 MR. MARGOLIS: Okay. I'll move the admission of
11 Respondent's 27.

12 MR. ROSE: Same objection as previously, Your Honor.

13 MR. MCGOVERN: Same objection.

14 JUDGE ROSAS: Overruled as previously stated.

15 (Respondent's R-27 received)

16 BY MR. MARGOLIS:

17 Q. And Ms. Ciliberti, again, just for the benefit of the
18 person reviewing the record, can you point out in the document
19 where it is that you made a note of Mr. England's comments in
20 that regard?

21 A. It's on the bottom of the second page.

22 Q. You mentioned that you interviewed yourself a Mr. Yandoli,
23 is that Tom Yandoli?

24 A. Yes.

25 Q. And again, without looking at any documents, do you

1 remember what if anything Mr. Yandoli told you about the
2 conditions on Paidge Avenue on April 2nd?

3 A. I do not.

4 MR. MARGOLIS: Can you look at the next document, which
5 is Respondent's Exhibit 28 for identification.

6 (Respondent's R-28 identified)

7 BY MR. MARGOLIS:

8 Q. And just read it to yourself.

9 A. (Reviewing) Having reviewed Respondent's Exhibit 28 for
10 identification, does that help you remember what if anything
11 Mr. Yandoli told you about the conditions on Paidge Avenue on
12 April 2nd?

13 A. Yes.

14 Q. And what generally did he tell you?

15 A. He had -- he had said that he couldn't get down the street
16 and that the traffic was backed up.

17 Q. And what is Respondent's Exhibit 28 for identification?

18 A. My notes with regard to the conversation with Tom Yandoli.

19 Q. Okay. And can you point out --

20 MR. MARGOLIS: Well, I'll move the admission of
21 Respondent's 28.

22 MR. ROSE: Same objection, Your Honor.

23 MR. MCGOVERN: Same objection.

24 JUDGE ROSAS: Respondent's 28 is received over
25 objection.

1 (Respondent's R-28 received)

2 BY MR. MARGOLIS:

3 Q. And can you point out where it is in your notes
4 Respondent's Exhibit 28 where you made a note of those comments
5 by Mr. Yandoli?

6 A. "Could not get down the street" is written across from
7 "Who told you about the gathering?" And "Traffic backed up" is
8 across from "What were you told about the reason for the
9 protest?"

10 Q. Now, I believe you mentioned that Damian Montanez
11 conducted some of the interviews?

12 A. Yes.

13 MR. MARGOLIS: Can you take a look at the next document,
14 which is Respondent's Exhibit 29 for identification.

15 (Respondent's R-29 identified)

16 BY MR. MARGOLIS:

17 Q. By the way, at the end of the investigation, did the -- or
18 in the course of the investigation did the various people who
19 conducted the interviews forward their notes to you?

20 A. Yes, we would gather at the end of the day and I would
21 collect all the paperwork and we would just talk about the
22 findings.

23 Q. And do you recognize Respondent's Exhibit 29?

24 A. I recognize it to be the series of questions that we
25 asked. The standard form.

1 Q. Okay. And what about the handwritten portion of it?

2 A. This is Damian's handwriting.

3 Q. Okay. And so are these the notes of Mr. Montanez's
4 interview of a particular employee?

5 A. Yes.

6 Q. What employee is that?

7 A. Norman Caban.

8 Q. And in the notes of the Norman Caban interview, did
9 Mr. Montanez record anything about the conditions observed on
10 Paidge Avenue on April 2nd?

11 JUDGE ROSAS: All right. Let's move away from that.
12 She doesn't -- she didn't generate this document. The document
13 speaks for itself unless there's something we can't understand.

14 MR. MARGOLIS: Okay. Well, I'll move the admission.

15 JUDGE ROSAS: The Human Resources Department at Time
16 Warner clearly is bestowed with the best in penmanship, so
17 unless there's something not clear here.

18 MR. MARGOLIS: Okay. We'll move the admission of
19 Respondent's 29.

20 MR. ROSE: Objection; double hearsay.

21 MR. MCGOVERN: Same objection.

22 JUDGE ROSAS: All right. The requisite chain of custody
23 in the generation of this document being made a business
24 record, as I previously ruled in other instances, isn't broken
25 by virtue of this witness' lack of authorship of the interview

1 notes since it's in the regular course of her business as she
2 testified and you can pursue this on voir dire and on cross
3 examination with respect to her ability to get these documents
4 generated and forwarded to her in the regular course of
5 business, so I'm going to overrule. Respondent's 29 is
6 received in evidence.

7 (Respondent's R-29 received)

8 MR. MARGOLIS: Can you take a look at the next document
9 which is Respondent's Exhibit 30, please.

10 (Respondent's R-30 identified)

11 BY MR. MARGOLIS:

12 Q. Do you recognize what this document is?

13 A. These are the notes of the conversation between Damian
14 Montanez and Franklin Pichardo.

15 MR. MARGOLIS: I'll move the admission of Respondent's
16 30.

17 MR. ROSE: Same objection as the previous exhibit, Your
18 Honor.

19 MR. MCGOVERN: Same.

20 JUDGE ROSAS: Same ruling. Respondent's 30 is received
21 in evidence.

22 (Respondent's R-30 received)

23 MR. MARGOLIS: Can you take a look at Respondent's 31
24 for identification, please.

25 (Respondent's R-31 identified)

1 BY MR. MARGOLIS:

2 Q. And can you tell us if you recognize this document?

3 A. Yes.

4 Q. What is it?

5 A. These are Damian's notes of his conversation with Joseph
6 Scarvati.

7 Q. And that's Damian Montanez?

8 A. Yes.

9 MR. MARGOLIS: I'll move the admission of Respondent's
10 31.

11 MR. ROSE: Same objection as previous exhibit.

12 MR. MCGOVERN: Same.

13 JUDGE ROSAS: Same ruling. Respondent's Exhibit 31 is
14 received.

15 (Respondent's R-31 received)

16 BY MR. MARGOLIS:

17 Q. Ms. Ciliberti, who handled the interviews of the four
18 employees; Cabrera, Ali, Tsavaris and Andersen?

19 A. I believe it was Mary Maldonado and Damian Montanez.

20 Q. And did they report to you on what they had learned?

21 A. Yes.

22 Q. And was that through the process of daily meetings that
23 you mentioned?

24 A. Yes, at the end of each day we would get together and just
25 review what had been discussed or shared by the employees.

1 Q. Now, you testified that these individuals, these four
2 individuals, were included among those who were suspended
3 because they were not scheduled to work and they didn't have a
4 credible business reason for being present on Paidge Avenue?

5 A. That's correct.

6 Q. And do you recall what was reported to you regarding Frank
7 Tsavaris that led to that conclusion?

8 A. Yes. In Frank Tsavaris' case he claimed that he just
9 happened to be in the neighborhood at 7 a.m. and when asked to
10 provide a reason, he said it was personal. Frank Tsavaris
11 lives up in the Bronx.

12 Q. And what was reported to you, if you remember, regarding
13 Mr. Ali that bears on or that bore on your conclusion that he
14 didn't have a credible business reason for being there?

15 A. So it was his regularly scheduled day off and he claimed
16 he was on his way into the city and was just dropping somebody
17 off. However, you could see Ali in the middle of the mob, the
18 blockade, so he wasn't just passing through.

19 Q. And when you say you could see him in the middle of the
20 mob, where was it that you could see him?

21 A. On the video.

22 Q. And what was reported to you regarding Ralf Andersen that
23 bore on having a credible business reason to be on the
24 premises?

25 A. So Ralf was actually on suspension and so there was no

1 valid reason why he needed to be present. He claimed that he
2 was there to meet with his steward to file a grievance.
3 However, he could have filed a grievance when he returned to
4 work on his next schedule work day. Again, it was very early
5 in the morning and Ralf lives very -- very far, on the east end
6 of Long Island. He lives out in Selden, so it's quite the
7 drive.

8 Q. Do you recall how long his suspension was, that is, I
9 mean, the suspension that he was already on?

10 A. I believe it was two days.

11 Q. And what was reported to you regarding Ms. Cabrera having
12 or not having a credible legitimate reason for being on the
13 premises?

14 A. She was also on a scheduled day off and she claimed that
15 she was dropping somebody off at Paidge Avenue, but you can
16 also see her on the video in the middle of the blockade.

17 MR. MARGOLIS: Could we go off the record for a moment,
18 Your Honor.

19 JUDGE ROSAS: Okay.

20 (Whereupon, a brief recess was taken)

21 JUDGE ROSAS: Back on.

22 BY MR. MARGOLIS:

23 Q. I want to ask you some questions about the three other
24 people who were suspended. Do you remember who the three other
25 people were?

1 A. Byron Yu and the other two names escape me right now,
2 sorry.

3 Q. Okay. We'll take them one at a time.

4 A. Okay.

5 Q. Was Byron Yu scheduled to work on April 2, 2014?

6 A. He was.

7 Q. And he never once received a suspension?

8 A. Yes, he did.

9 Q. And why was that?

10 A. He moved his car from a legally parked spot into the
11 middle of Paidge Avenue, which blocked out ability to roll out
12 our trucks and the employees congregated around that vehicle.

13 Q. Okay. Can you take a look at General Counsel's Exhibit 8.

14 A. (Reviewing)

15 Q. Do you recognize that document?

16 A. Yes.

17 Q. Having reviewed that document does that refresh your
18 recollection as to whether Mr. McGovern was one of the people
19 who were suspended?

20 A. You mean 8 is for Diana Cabrera.

21 MR. MARGOLIS: Mine are mismarked.

22 MR. ROSE: No, GC-8 --

23 MR. MARGOLIS: Should we just go off the record, Your
24 Honor.

25 JUDGE ROSAS: Sure.

1 (Whereupon, a brief recess was taken)

2 BY MR. MARGOLIS:

3 Q. I'm showing you my copy, Ms. Ciliberti, of General Counsel
4 Exhibit 8 in evidence and can you review that.

5 A. (Reviewing) Okay.

6 Q. And having read that, do you recall why Mr. McGovern was
7 suspended?

8 A. He had called out sick on the day of the blockage but he
9 was actually seen on video participating.

10 Q. And do you remember whether David Lopez was one of the
11 employees who was suspended?

12 A. Yes, he was.

13 Q. And do you remember why he was suspended?

14 A. David Lopez was not scheduled to work at that hour of the
15 morning nor is David Lopez ever scheduled to work at the
16 southern Manhattan location. He's an employee located at our
17 northern Manhattan location.

18 Q. And was he observed on the video?

19 A. Yes, he was observed on the video participating in the
20 blockade.

21 Q. And I don't know if I asked you this. Was Mr. McGovern
22 observed in the video participating as well?

23 A. Yes, he was.

24 Q. And you made reference to the northern Manhattan location?

25 A. Yes.

1 Q. Can you just tell us where that is?

2 A. West 219 Street and Broadway.

3 Q. In which borough?

4 A. Upper Manhattan.

5 MR. MARGOLIS: No further questions.

6 JUDGE ROSAS: Cross.

7 MR. ROSE: Yes. May we have five or ten minutes, Your

8 Honor?

9 JUDGE ROSAS: Okay.

10 (Whereupon, a brief recess was taken)

11 JUDGE ROSAS: Cross.

12 CROSS EXAMINATION

13 BY MR. ROSE:

14 Q. Ms. Ciliberti, David Lopez, isn't it true, at the time in

15 April, May 2014 he was a shop steward?

16 A. I believe he was a shop steward then, yes, for the

17 northern Manhattan location.

18 MR. ROSE: No further questions, Your Honor.

19 MR. MCGOVERN: No questions.

20 JUDGE ROSAS: Okay. Any follow-up on your part?

21 MR. MARGOLIS: No, Your Honor.

22 JUDGE ROSAS: Okay. Thank you. You're excused.

23 THE WITNESS: Thank you.

24 (Witness is excused)

25 JUDGE ROSAS: Do you have any other witnesses?

1 MR. MARGOLIS: We have no more witnesses, Your Honor. A
2 few other documents I wanted to submit.

3 JUDGE ROSAS: Okay. Off the record.

4 (Whereupon, a brief recess was taken)

5 JUDGE ROSAS: Let's go back on the record. All right.
6 Respondent.

7 MR. MARGOLIS: Yes, Your Honor. We have no further
8 witnesses. We just wanted to offer into evidence the following
9 documents.

10 Respondent's Exhibit 32 is the letter from the Regional
11 Director dated January 5, 2015, which initially dismissed the
12 instant charge, and since they go together, Respondent's 33 is
13 the Regional Director's letter dated May 21, 2015 revoking that
14 dismissal.

15 (Respondent's R-32 and R-33 identified)

16 MR. ROSE: No objection, Your Honor.

17 JUDGE ROSAS: It's Respondent's 32 through 35?

18 MR. ROSE: No.

19 MR. MARGOLIS: No, 32 and 33 only.

20 JUDGE ROSAS: We're only dealing with those only. All
21 right. Respondent's --

22 MR. ROSE: No objection to 32 and 33.

23 JUDGE ROSAS: Respondent's 32 and 33 are received.

24 (Respondent's R-32 and R-33 received)

25 MR. MARGOLIS: Respondent's 34 is a letter from counsel

1 for Local 3 dated May 21, 2015 relating to an arbitration that
2 was previously initiated concerning this discipline and
3 Respondent's 35 is counsel for Respondent's response to that
4 which is part of the procedural background in this case.

5 (Respondent's R-34 and R-35 identified)

6 MR. ROSE: General Counsel objects to both these
7 exhibits 34 and 35 based on the extended objection earlier
8 today.

9 JUDGE ROSAS: Same thing for Charging Party?

10 MR. MCGOVERN: Correct, Your Honor. And just as a point
11 of clarification, I believe counsel for Respondent just said
12 for these disciplines?

13 MR. MARGOLIS: I said that, yes.

14 MR. MCGOVERN: And I just wanted to be clear, even
15 though I don't feel it's relevant, but this arbitration dealt
16 with more than just the four discriminatees in this case. It
17 dealt with every one who had gotten warnings and suspensions in
18 addition to the four.

19 MR. MARGOLIS: That's correct.

20 JUDGE ROSAS: Let's check it out. I'll receive
21 Respondent's 35 and 34 over objection.

22 (Respondent's R-34 and R-35 received)

23 JUDGE ROSAS: Anything else?

24 MR. MARGOLIS: Nothing further, Your Honor.

25 JUDGE ROSAS: Okay. Respondent rests. Is there a

1 rebuttal?

2 MR. ROSE: There is, Your Honor. And the rebuttal
3 consists of putting in documents.

4 JUDGE ROSAS: Okay.

5 MR. ROSE: We've been copying. We still have some
6 copying to do.

7 JUDGE ROSAS: Okay. Off the record.

8 (Whereupon, an extended recess was taken)

9 JUDGE ROSAS: Let's go on the record. All right.
10 General Counsel.

11 MR. ROSE: All right. Would you like me to describe the
12 documents --

13 JUDGE ROSAS: As far as your rebuttal you are offering
14 some documents; is that what it is?

15 MR. ROSE: Indeed, Your Honor, yes.

16 JUDGE ROSAS: Go ahead.

17 MR. ROSE: Okay. I offer as GC-35 a motion -- sorry,
18 Respondent's motion to reopen the record in 363 NLRB 30.

19 (General Counsel's GC-35 identified)

20 MR. ROSE: As GC-39 Local 3's response in opposition to
21 that motion to reopen.

22 (General Counsel's GC-39 identified)

23 MR. ROSE: As GC-40 it's the memorandum in support of
24 the NLRB's motion to intervene in the 301 action before Judge
25 Weinstein.

1 (General Counsel's GC-40 identified)

2 MR. ROSE: Judge Weinstein's decision confirming the
3 arbitration award is GC-41.

4 (General Counsel's GC-41 identified)

5 MR. ROSE: And for the summary judgment -- yes, GC-42
6 would be Charging Party's opposition to the motion for summary
7 judgment.

8 (General Counsel's GC-42 identified)

9 MR. ROSE: GC-43 is General Counsel's opposition to the
10 motion for summary judgment.

11 (General Counsel's GC-43 identified)

12 MR. ROSE: And GC-44 is General Counsel's motion to
13 strike or alternatively to respond to Respondent's reply in
14 support of motion for summary judgment and Respondent's
15 supplement to motion for summary judgment.

16 (General Counsel's GC-44 identified)

17 JUDGE ROSAS: Any objection?

18 MR. MARGOLIS: Yes, Your Honor. I'll take them
19 seriatim. There's objections to some of them. Thirty-five --
20 General Counsel's 35 and 39 we would object to the admission
21 into the record of those documents. Both of those filings, as
22 Mr. Rose stated, relate to or were made in the case
23 29-CB-125701. Nothing in that case, nothing in that decision
24 and before us nothing in the motion practice that was filed has
25 any bearing on any issue before you. The sole issue in that

1 case was whether the document tendered by Time Warner Cable in
2 fact accurately reflected the parties' agreement thereby
3 obligating Local 3 sign it.

4 The sole holding in the case was that that document did
5 not accurately reflect the agreement of the parties because
6 there was no meeting of the minds on the issue of whether the
7 riders were to continue in effect.

8 A dispute about and a Board decision on whether that
9 document tendered by Time Warner Cable was an accurate
10 reflection of the parties' agreement or not does not involve in
11 any way any issue before you. And in particular, it does not
12 relate to whether the parties were party to a binding and
13 effective no-strike obligation at the time in questions
14 because, again, all the Board was deciding was that there was
15 no Heinz violations because of a dispute about the riders.

16 So, on that basis, we would object to GC-35 and 39.

17 JUDGE ROSAS: My question to you is: Does that
18 proceeding of the facts litigated in that proceeding in
19 whatever form they were related all to the events of April 2,
20 2014 between 6:30 a.m. and 9 a.m.?

21 MR. MARGOLIS: I'm not aware of any connection, Your
22 Honor.

23 JUDGE ROSAS: So they relate to an incident on some
24 other day?

25 MR. MARGOLIS: That case, you mean, when you say "they

1 relate”?

2 JUDGE ROSAS: General Counsel’s 35 and 39, they don’t
3 relate --

4 MR. MARGOLIS: They don’t relate to --

5 JUDGE ROSAS: -- in any way whatsoever to the events?
6 They don’t subsume or refer to the events of April 2, 2014
7 between 6:30 a.m. and 9 a.m.?

8 MR. MARGOLIS: I believe there was no mention of that
9 issue.

10 JUDGE ROSAS: They refer to a totally different event
11 that transpired that’s the underlying dispute?

12 MR. MARGOLIS: I believe that’s correct, Your Honor.

13 JUDGE ROSAS: I haven’t seen them yet. What do they
14 refer to? Christmas Day 2011?

15 MR. ROSE: Okay. I’ll explain to you the relevance,
16 Your Honor.

17 As we know, you’ve admitted into evidence Respondent’s
18 Exhibit 20, the big binder of documents. They opened up -- we
19 objected to that. They opened that up. They opened that issue
20 up.

21 Now, the motion to reopen the record is relevant because
22 to see what the Board shot down in Footnote 1 in terms of
23 relevant evidence. As I said earlier, some of the evidence
24 that they put in Respondent’s 20 is the exact same evidence
25 that they used to try to reopen the record and this proves

1 that.

2 JUDGE ROSAS: Okay. So let me just take a step back.

3 MR. ROSE: Okay.

4 JUDGE ROSAS: Because I'm focused obviously on the crux
5 of this case which is what transpired on April 2, 2014 in the
6 morning and as General Counsel is referring to the submissions
7 by the Respondent, they relate to a procedural background
8 relating to the legal relations connection between the Union
9 and the company prior to that date, which would have some
10 bearing or not on the rights and obligations of the parties
11 towards their employees' unit employee members as of April 2,
12 2014.

13 That's the basis upon which you offered it, right?
14 Without -- if you can say yes or no, that's fine. If you
15 can't, then tell me that.

16 Am I incorrect in my general reference to what you
17 tendered and I received?

18 MR. MARGOLIS: Okay. What we tendered was for the
19 purpose of establishing that the conduct on April 2nd was
20 unprotected not only because it was a mass picket --

21 JUDGE ROSAS: I understand all that.

22 MR. MARGOLIS: But because it was in violation of an
23 effective -- a binding and effective no-strike obligation in
24 force at the time recognized by both parties.

25 JUDGE ROSAS: All right. And the General Counsel,

1 you're now saying that these documents relate to the procedural
2 background that's been put in place by the Respondent, correct?

3 MR. ROSE: Indeed, yes, that's what we're rebutting.

4 JUDGE ROSAS: With respect to the previous, whether it's
5 the District Court litigation, the arbitration proceedings,
6 Judge Fish's decision, the Board review of that decision; these
7 documents relate to those proceedings, correct?

8 MR. ROSE: The Board's --

9 JUDGE ROSAS: Or are they from some other proceeding?

10 MR. ROSE: No, no, it all relates to that universe that
11 they want to put -- that Respondent's 20 and their argument
12 that there was a no-strike clause in effect and that the
13 Board's decision in 363 NLRB 30 is not relevant to this case.
14 It is why we're here as I explained earlier.

15 JUDGE ROSAS: So you obviously gathered by now that I'm
16 not -- with respect to your offer and overruling the objection
17 of the General Counsel and the Charging Party that I'm not at
18 this juncture in the capacity to parse relevance and non-
19 relevance and issue essentially rulings on limiting motions
20 based on the representation that they can't possibly have any
21 connection to this case or at least be worthy of some mention
22 in a procedural posture leading up to this controversy,
23 especially as it relates to the relationship between the Union
24 and the company, so I see no basis to sustain the objection.

25 MR. MARGOLIS: Well, certainly, Your Honor, we could

1 appreciate that you haven't yet had the opportunity to fully
2 absorb the rather voluminous documents there. However, our
3 position is exactly that these -- that that case, the CB case,
4 has absolutely nothing to do with any issue that you're called
5 upon in this case.

6 JUDGE ROSAS: It all seems to be connected at least
7 plausibly at this juncture. And again, should I be incorrect
8 in my receipt of them at this point, there is certainly not
9 going to be any prejudice to any party should that turn out to
10 be the case.

11 General Counsel's 35 and 39 are received.

12 (General Counsel's GC-35 and GC-39 received)

13 JUDGE ROSAS: Next.

14 MR. MARGOLIS: Okay. General Counsel's 40 is part, a
15 small piece, a very small piece, of the briefing in the
16 proceedings before Judge Weinstein that led to confirmation of
17 the arbitration award. Of course, the arbitration award on the
18 work stoppage on April 2, 2014.

19 As I know you're aware, that briefing and those
20 proceedings resulted in a decision by Judge Weinstein, which is
21 marked for identification as General Counsel's 41 and we have
22 no objection to General Counsel's 41 being admitted.

23 However, to pull out one piece of the briefing in that
24 case seems inappropriate to us and the fact that the Board
25 filed a brief in that case, again, does not relate in any way

1 to the issue before you. And what it does is it invites
2 putting into the record in this case what was extremely
3 voluminous briefing in the proceedings before Judge Weinstein.
4 So, you know, to admit General Counsel 40 seems to open the
5 door to a rather unproductive exercise of introducing the
6 parties' various briefs and reply briefs and sur-reply briefs
7 when at this point the document has no relevance to anything
8 because Judge Weinstein issued a decision. In which, by the
9 way, he found among other things that egress and ingress were
10 blocked on April 2, 2014.

11 JUDGE ROSAS: Why do we need your motion to intervene?

12 MR. ROSE: Your Honor, we'll be willing --

13 JUDGE ROSAS: The NLRB, the Board's motion to intervene,
14 not the General Counsel.

15 MR. ROSE: Your Honor, to move things along if we could
16 table that, General Counsel's response, because there's no
17 objection to 41. Then if I could at the end --

18 JUDGE ROSAS: Go ahead. You want to lump them all
19 together.

20 MR. ROSE: Yeah, at the -- once we go through all of
21 them, I will ask for a few moments to reconsider putting in
22 GC-40. So if we could admit GC-41 which is Judge Weinstein's
23 decision.

24 JUDGE ROSAS: General Counsel's 41 is received.

25 (General Counsel's GC-41 received)

1 MR. ROSE: Okay. And then we could move on to the
2 objections to GC-42, 43 and 44.

3 MR. MARGOLIS: Okay. So GC 42 is the Charging Party's
4 opposition to Respondent's motion for summary judgment in this
5 case. As much as we would like to argue that only Respondent's
6 moving papers should be part of the record and not the
7 opposition, we're not going to take that position, so we have
8 no objection to General Counsel's 42.

9 On the same basis we have no objection to General
10 Counsel's 43, which is the General Counsel's opposition to Time
11 Warner Cable's motion for summary judgment.

12 JUDGE ROSAS: And that leaves 44.

13 MR. ROSE: So perhaps --

14 JUDGE ROSAS: Hold on. Hold on.

15 MR. MARGOLIS: Yeah, I mean General Counsel 44 doesn't
16 seem to be a substantive document. It's raising a procedural
17 objection to Respondent's filing of a reply in support of its
18 summary judgment motion. Again, here, the Board decided the
19 motion and so we don't -- we don't see what this motion to
20 strike adds in any way to the record.

21 JUDGE ROSAS: How does that help?

22 MR. ROSE: Well, it's -- we're putting in, you know,
23 we've decided to put in the motions -- the motion papers for
24 summary judgment and there were more than three, so we're
25 putting in our other paper. It completes that summary judgment

1 record.

2 JUDGE ROSAS: All right. So you have an objection to
3 General Counsel's 44. You don't oppose 42 and 43.

4 MR. MARGOLIS: Correct.

5 JUDGE ROSAS: General Counsel's 42 and 43 are received.

6 (General Counsel's GC-42 and GC-43 received)

7 JUDGE ROSAS: Forty-one was received. I'm going to
8 overrule the objection to General Counsel's 40 and 44. Those
9 are received as well.

10 (General Counsel's GC-40 and GC-44 received)

11 MR. ROSE: I'll give a stack to Your Honor and the court
12 reporter.

13 JUDGE ROSAS: Thank you.

14 All right. Is there anything else?

15 MR. ROSE: No, General Counsel rests.

16 JUDGE ROSAS: And do you have anything further?

17 MR. MARGOLIS: Nothing further, Your Honor.

18 JUDGE ROSAS: Okay. Charging Party?

19 MR. MCGOVERN: We're good.

20 JUDGE ROSAS: Okay. That concludes the testimony and
21 the receipt of evidence in this case.

22 I will give the parties until May 20, 2016 for the
23 receipt and submission of briefs and any proposed findings of
24 fact, conclusions of law. I direct the parties to the Board's
25 rules and regulations for the submission of such briefs.

1 Should there be any questions, let me know.

2 I especially advise Counsel for Respondent and Charging
3 Party to when you file, do not file with the Region but there
4 is an electronic filing room that's specific, a separate tab
5 for filing it within the Division of Judges in Washington, so I
6 don't have a second occasion to issue a decision indicating
7 that there was no brief received from one of the parties
8 because I won't -- it's just not a habit for me to reach out.
9 So I'll just assume you're not interested if I don't get
10 anything, although I know that won't be a problem in this case.

11 So I will give you all until May 20th of 2016. Should
12 there be any need for any need for an extension, such request
13 needs to go to Deputy Chief Arthur Amchan in Washington, D.C.
14 with the specific reason for the request and whether or not all
15 the other parties have agreed to the extension.

16 There being nothing further, off the record.

17 (Whereupon, at 4:15 p.m. the above entitled matter was
18 concluded.)

19

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C E R T I F I C A T E

This is to certify that the attached proceedings done before
the NATIONAL LABOR RELATIONS BOARD REGION 2

In the Matter of:

TIME WARNER CABLE NEW YORK CITY, LLC,

Respondent,

and

LOCAL UNION NO. 3 INTERNATIONAL
BROTHERHOOD OF ELECTRICAL WORKERS,

Charging Party.

Case No.: 02-CA-126860

Date: April 13, 2016

Place: New York, New York

Were held as therein appears, and that this is the original
transcript thereof for the files of the Board

Michelle Morales
Official Reporter

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